

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

AMAZON.COM, INC. ET AL, ) CV-18-00767-BLF  
                                )  
                                PLAINTIFF, ) SAN JOSE, CALIFORNIA  
                                )  
                                VS. ) APRIL 27, 2018  
                                )  
PERSONAL WEB TECHNOLOGIES, LLC ) PAGES 1-48  
ET AL, )  
                                )  
                                DEFENDANT. )  
                                )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

## A P P E A R A N C E S

FOR THE PLAINTIFF: BY: MICHAEL SHERMAN  
SANDEEP SETH  
WESLEY MONROE  
STUBBS ALDERTON MARKILES, LLP  
15260 VENTURA BLVD., 20TH FLOOR  
SHERMAN OAKS, CA 91403

FOR THE DEFENDANT:  
AMAZON  
  
BY: J. DAVID HADDEN  
PHILLIP HAACK  
SAINA SHAMILOV  
  
FENWICK & WEST LLP  
SILICON VALLEY CENTER  
801 CALIFORNIA STREET  
MOUNTAIN VIEW, CA 94041

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

1 SAN JOSE, CALIFORNIA

APRIL 27, 2018

2 P R O C E E D I N G S

3 (COURT CONVENED AT 9:57 A.M.)

09:57:03 4 THE CLERK: CALLING LOWEST CASE 18-0154. PERSONAL  
09:57:09 5 WEB VERSUS ATLASSIAN, AND ALL PERSONAL WEB CASES SCHEDULED.

09:57:27 6 MR. SHERMAN: GOOD MORNING, YOUR HONOR.

09:57:28 7 MICHAEL SHERMAN, STUBBS, ALDERTON, MARKILES. I REPRESENT  
09:57:35 8 THE PERSONAL WEB AND LEVEL 3 IN THOSE CASES THAT THEY FILED, AS  
09:57:41 9 WELL AS I AM REPRESENTING THEM IN THEIR CAPACITY AS DEFENDANTS  
09:57:45 10 IN THE CASE FILED.

09:57:47 11 I HAVE WITH ME MY COLLEAGUES, SANDEEP SETH AND

09:57:51 12 MR. WESLEY MONROE.

09:57:59 13 MR. HADDEN: GOOD MORNING, YOUR HONOR.

09:58:00 14 DAVE HADDEN FOR AMAZON AND CUSTOMER DEFENDANTS. I HAVE  
09:58:03 15 WITH ME SAINA SHAMILOV AND PHIL HAACK.

09:58:07 16 THE COURT: GOOD MORNING. GOOD MORNING TO EVERYONE.

09:58:13 17 SO MY DOCKET EXPLODES EVERY DAY WHENEVER YOU TAKE A  
09:58:19 18 BREATH, BECAUSE YOU TAKE A BREATH FIFTEEN TIMES BEFORE YOU CAN  
09:58:22 19 DO ANYTHING.

09:58:25 20 AND CLEARLY, THIS MOTION IS, THE PRELIMINARY INJUNCTION OR  
09:58:29 21 THE MOTION TO STAY, WHICHEVER SIDE WE ARE ON, IS AN ATTEMPT TO  
09:58:37 22 BRING SOME ORDER TO WHAT IS OTHERWISE A LITTLE BIT OF CHAOS.

09:58:42 23 BUT LET ME START WITH WHAT I ASKED YOU TO BE PREPARED TO  
09:58:45 24 DISCUSS. I HAVE ABOUT 30 CASES IN ALL THAT PERSONAL WEB HAS  
09:58:48 25 FILED AGAINST INDIVIDUAL DEFENDANTS, PLUS THE AMAZON CASE. AND

09:58:56 1 SO NOT ALL OF THE CASES ARE BEFORE ME TODAY, CORRECT?

09:59:01 2 MR. SHERMAN: I BELIEVE THAT'S BECAUSE, FOR WHATEVER

09:59:03 3 REASON, MOTIONS FOR STAY WEREN'T FILED IN THOSE CASES, PERHAPS.

09:59:07 4 THE COURT: RIGHT.

09:59:07 5 MR. SHERMAN: I CAN'T THINK OF ANOTHER REASON.

09:59:09 6 MR. HADDEN: THERE ARE CASES IN OTHER JURISDICTIONS,

09:59:12 7 YOUR HONOR.

09:59:12 8 THE COURT: NO, I JUST MEAN THE 30 BEFORE ME, NOT ALL

09:59:15 9 OF THOSE CASES ARE FILING MOTIONS TO STAY RIGHT NOW.

09:59:18 10 MR. HADDEN: CORRECT. I THINK SOME OF THE DEFENDANTS

09:59:20 11 HAVE NOT BEEN SERVED, YOUR HONOR.

09:59:22 12 THE COURT: THAT COULD BE. OKAY. AND THAT'S FINE.

09:59:25 13 SO I KNOW THAT YOU ARE GOING TO THE MDL COMMITTEE AT THE

09:59:29 14 END OF MAY. AND I'M NOT ACTUALLY FAMILIAR WITH PATENT MDL'S, I

09:59:34 15 DON'T KNOW WHETHER YOU ARE.

09:59:35 16 MR. SHERMAN: YOUR HONOR, INTERESTINGLY, THE NATIONAL

09:59:39 17 LAW JOURNAL HAD AN ARTICLE, I THINK APPROXIMATELY FOUR OR

09:59:43 18 FIVE WEEKS AGO SAYING, YOU KNOW, HEADLINE, THERE MAY BE MDL'S

09:59:50 19 IN PATENT CASES FOLLOWING TC HEARTLAND.

09:59:54 20 THE COURT: YEAH.

09:59:55 21 MR. SHERMAN: AND THE REPORTER WHO WROTE THIS ARTICLE

09:59:59 22 ABOUT THIS POTENTIALLY NEW DEVELOPMENT, AND THERE ARE SEVERAL

10:00:03 23 CASES, IT WAS REPORTED, BEFORE THE MDL PANEL NOW.

10:00:08 24 AND AS I'M SURE COUNSEL WOULD AGREE, ONE OF THE PRIMARY

10:00:13 25 ISSUES THERE IS GOING TO BE THE LEVEL OF COMMONALITY. I MEAN,

10:00:18 1 THE ISSUE OF EFFICIENCY, I THINK IS FOREGONE, IF THERE'S  
10:00:23 2 COMMONALITY.

10:00:25 3 SO WHAT HAD HAPPENED, IF I MAY, WAS IN EARLY JANUARY, MY  
10:00:34 4 CLIENTS FILED PATENT CASES, PATENT LITIGATION CASES IN THE  
10:00:40 5 NORTHERN DISTRICT, IN THE EASTERN DISTRICT OF TEXAS, IN  
10:00:44 6 DELAWARE, IN THE SOUTHERN DISTRICT OF NEW YORK, AND THE EASTERN  
10:00:47 7 DISTRICT OF NEW YORK, IN THE CENTRAL DISTRICT OF CALIFORNIA,  
10:00:51 8 AND THERE ARE MORE CASES TO BE FILED BECAUSE MY CLIENT'S  
10:01:01 9 PATENTS, WE BELIEVE, ARE BEING INFRINGED, OKAY.

10:01:05 10 AND AMAZON THEN FILED ITS DJ ACTION IN EARLY FEBRUARY. WE  
10:01:12 11 HAD BEEN WORKING ON AN MDL MOTION, AND THERE'S A LOT OF  
10:01:17 12 PAPERWORK TO PUT TOGETHER WITH RESPECT TO THOSE MOTIONS.

10:01:22 13 THE COURT: OF COURSE.

10:01:22 14 MR. SHERMAN: AND THEN THE NEXT THING THAT HAD  
10:01:24 15 HAPPENED WAS WE WERE SERVED WITH AMAZON'S PRELIMINARY  
10:01:28 16 INJUNCTION MOTION THAT WE ARE HERE ON THIS MORNING.

10:01:31 17 WHEN I SAW THE PAPERS, I REALIZED, OH MY GOODNESS, WE GOT  
10:01:36 18 A QUICK RETURN DATE ON THIS PI MOTION, AND THERE'S A LOT OF  
10:01:39 19 WORK TO BE DONE.

10:01:42 20 AND SO ONE'S FIRST INSTINCT, OF COURSE, IS TO CALL  
10:01:47 21 OPPOSING COUNSEL, AND WE HAD A VERY PLEASANT CONVERSATION, AND  
10:01:49 22 I SAID MR. HADDEN, I NEED SOME MORE TIME, AND HE WAS GRACIOUS  
10:01:53 23 ABOUT IT.

10:01:54 24 AND I SAID, BY THE WAY, WE ARE FILING OUR MDL MOTION THE  
10:01:58 25 NEXT DAY OR TWO OR THREE, WHY DON'T WE TRY TO DO THIS IN SOME

10:02:04 1 STAGED OR EFFICIENT WAY, WE DON'T THINK YOU ARE RIGHT ON THE PI  
10:02:09 2 MOTION, YOU THINK YOU ARE RIGHT ON THE PI MOTION.

10:02:12 3 BUT ULTIMATELY, AT THE END OF THE DAY, ESPECIALLY SINCE  
10:02:17 4 YOU AGREE WITH US, THIS IS ALL COMMON. WHY DON'T WE GET BEFORE  
10:02:22 5 THE MDL PANEL SO WE CAN BRING SOME EFFICIENCY TO THIS PROCESS  
10:02:26 6 AND NOT HAVE TO DEAL WITH MULTIPLE JUDGES.

10:02:29 7 BY THE WAY, YOUR HONOR WAS SELECTED BY US AS A  
10:02:34 8 RECOMMENDATION TO THE MDL PANEL. CONGRATULATIONS.

10:02:38 9 THE COURT: THAT'S A BACKHANDED COMPLIMENT, IF EVER I  
10:02:42 10 HEARD ONE.

10:02:42 11 MR. SHERMAN: SO THE DISCUSSION THAT ENSUED WAS, HAVE  
10:02:48 12 THE PI MOTION GO FORWARD AFTER THE MDL.

10:02:51 13 THE COURT: SO WHAT'S INTERESTING TO ME ON THIS,  
10:02:54 14 MR. SHERMAN, IS IF I WERE TO GRANT THE PI MOTION, I DON'T THINK  
10:02:59 15 THERE WOULD BE ANY NEED FOR AN MDL.

10:03:01 16 AND SO THEN I'M IN THIS, WELL, BECAUSE THEN I'VE STAYED  
10:03:07 17 ALL CASES YOU HAVE BROUGHT, OR COULD BRING UNTIL I RESOLVE THE  
10:03:12 18 AMAZON ISSUES. AND THERE'S NO REASON FOR AN MDL.

10:03:16 19 AND I'M NOT SUGGESTING THAT THE MDL COMMITTEE WOULDN'T SEE  
10:03:19 20 IT DIFFERENTLY, YOU MIGHT STILL WANT TO BRING THEM ALL TO ME SO  
10:03:24 21 THAT I COULD SUPERVISE THE RESOLUTION OF THE DISPUTE. AND I  
10:03:27 22 NEVER HAVE A POSITION ON WHETHER IT SHOULD BE AN MDL OR NOT.  
10:03:31 23 BUT I KNOW THAT THE MDL COMMITTEE GENERALLY ADVISES JUDGES TO  
10:03:39 24 WHO THESE INDIVIDUAL CASES TO CONTINUE AND HEAR AND DECIDE  
10:03:41 25 MATTERS IN THE NORMAL COURSE AND PAY NO ATTENTION TO THE MDL

10:03:45 1 HEARING SCHEDULE. AND I RESPECT THAT.

10:03:48 2 AND YET, MANY JUDGES STAY CASES PENDING THAT DECISION.

10:03:54 3 MR. SHERMAN: WE'VE DONE THAT IN NEW YORK, FOR

10:03:57 4 EXAMPLE, AND IN THE EASTERN DISTRICT OF TEXAS, FOR EXAMPLE.

10:04:00 5 THE COURT: RIGHT.

10:04:00 6 MR. SHERMAN: AND SO THE POINT IS WHETHER IT WAS WITH

10:04:02 7 THE FENWICK AND WREST OFFICE, BECAUSE THEY'VE APPEARED ON

10:04:05 8 BEHALF OF MANY DEFENDANTS ALL OVER THE PLACE, OR WITH OTHER

10:04:08 9 COUNSEL IN THOSE FEW INSTANCES, WE'VE GOTTEN TO THE POINT, I

10:04:16 10 BELIEVE.

10:04:16 11 AND BY THE WAY, YOUR HONOR, IF THERE ARE TECHNICAL

10:04:19 12 QUESTIONS THAT ARISE, I MAY HAVE TO ASK ONE OF MY COLLEAGUES TO

10:04:23 13 JUMP IN. I HOPE YOUR HONOR DOESN'T MIND.

10:04:25 14 THE COURT: YOU KNOW WHAT, I WOULD MUCH RATHER HEAR

10:04:31 15 ONCE FROM THE PERSON WHO CAN ANSWER THE QUESTION THAN ONCE FROM

10:04:36 16 THE PERSON WHO CAN'T AND THEN FROM THE ONE WHO CAN. I WELCOME

10:04:39 17 THAT.

10:04:39 18 MR. SHERMAN: OKAY. THANK YOU.

10:04:40 19 SO WE ARE NOT AVERSE TO HEARING WHAT OTHER TRIBUNALS MIGHT

10:04:48 20 HAVE TO SAY ON THE ISSUE OF EFFICIENCY AND ECONOMY BEFORE

10:04:53 21 HURDLING IN.

10:04:54 22 YOUR HONOR DID MAKE THE OBSERVATION THAT, WELL FROM AN

10:04:58 23 EFFICIENCY STANDPOINT, IF THE PI MOTION WERE GRANTED, MAYBE

10:05:04 24 THAT'S THE MOST EFFICIENT THING AND THERE WOULDN'T EVEN NEED TO

10:05:07 25 BE --

10:05:08 1 THE COURT: WELL, IT'S NOT INEFFICIENT, IT JUST NEEDS  
10:05:11 2 TO BE CORRECT.

10:05:12 3 MR. SHERMAN: I UNDERSTAND.

10:05:13 4 PUNISHING SAUDI ARABIA, THEY PUNISH PEOPLE FOR JAY WALKING  
10:05:16 5 BY CAPITAL PUNISHMENT, SO THERE'S NO JAY WALKING. SO BY  
10:05:20 6 ANALOGY, I'M SUGGESTING THAT WE HAVE SOME VERY GOOD REASONS WHY  
10:05:24 7 SUBSTANTIVELY, MERITS-WISE, THE PI MOTION OUGHT NOT BE GRANTED.

10:05:28 8 PERHAPS ONE OF THE MORE IMPORTANT ONES BEING THE DATATERN  
10:05:36 9 DECISION OUT OF THE FEDERAL CIRCUIT REQUIRES A CASE -- WELL,  
10:05:39 10 THE ARTICLE III AND THE DATATERN DECISION REQUIRES A CASE FOR  
10:05:43 11 CONTROVERSY.

10:05:44 12 AND SINCE PERSONAL WEB LEVEL 3 HAVE NOT FILED A COMPLAINT  
10:05:50 13 AGAINST AMAZON ALLEGING DIRECT INFRINGEMENT BY AMAZON, AMAZON  
10:05:55 14 COULD, IF IT SO CHOSE, SEEK TO INTERVENE IN THOSE ACTIONS, AND  
10:06:01 15 THEY'VE ALREADY FILED A BRIEF BEFORE THE MDL PANEL.

10:06:07 16 YOUR HONOR HAD REMARKED IN AN EARLIER MATTER ABOUT THE  
10:06:10 17 NEEDLESS PROLIFERATION OF LITIGATION, AND I COULDN'T AGREE  
10:06:15 18 MORE, WHICH IS WHY EITHER THE MDL PANEL IS GOING TO ACKNOWLEDGE  
10:06:21 19 THE FACT THAT THERE'S A LOT OF COMMONALITY HERE ON ISSUES SUCH  
10:06:25 20 AS THE USE OF THE RUBY ON RAILS ARCHITECTURE THAT WE ALlege IN  
10:06:30 21 CONJUNCTION WITH THE INDIVIDUAL DEFENDANT'S CONTROL OVER ETAGS,  
10:06:36 22 IS THE THEORY OF INFRINGEMENT, OR THEY ARE GOING TO SAY, NO,  
10:06:41 23 LET'S JUST HAVE 55 CASES.

10:06:43 24 THE COURT: THE MDL ISSUE, AND YOU KNOW MORE ABOUT  
10:06:46 25 THIS THAN I DO, THE AMERICAN INVENTS ACT ELIMINATED THE

10:06:51 1 OPPORTUNITY FOR A PLAINTIFF TO SUE MULTIPLE DEFENDANTS IN A  
10:06:54 2 SINGLE CASE.

10:06:55 3 MR. SHERMAN: THAT'S RIGHT.

10:06:56 4 THE COURT: OKAY. SO NOW HERE WE ARE GOING TO AN  
10:06:59 5 MDL, ISN'T THAT A BACK DOOR WAY AROUND THE AI A?

10:07:02 6 MR. SHERMAN: WELL, YOU KNOW, I DON'T BELIEVE --

10:07:06 7 THE COURT: IS THAT A YES?

10:07:07 8 MR. SHERMAN: NO, IT'S NOT A YES, BECAUSE CONGRESS,  
10:07:10 9 IN ITS WISDOM, DECIDED THAT IT DIDN'T WANT TO HAVE A WHOLE  
10:07:15 10 BUNCH OF FOLKS GOING TO THE EASTERN DISTRICT OF TEXAS, OR WHAT  
10:07:19 11 WE WILL CALL PLAINTIFF-FRIENDLY JURISDICTIONS, AND SO THEY  
10:07:22 12 DIDN'T WANT THAT KIND OF RAMPANT VENUE FORUM SHOPPING.

10:07:30 13 AND YET, YOU KNOW, AMAZON, IT'S PAPERS EXCORIATES US FROM  
10:07:36 14 FILING A LOT OF LAWSUITS. WELL, YOU CAN'T HAVE IT BOTH WAYS.

10:07:40 15 THE COURT: SO THAT'S NOT MY CONCERN. YOU CAN FILE  
10:07:42 16 AS MANY LAWSUITS AS YOU WANT. AND YOU HAVE TO DO EACH ONE  
10:07:47 17 SEPARATELY, AND THEN HERE -- BUT AGAIN, THE MDL COMMITTEE WILL  
10:07:51 18 HAVE TO GRAPPLE WITH THAT ISSUE AND IT MAY OR MAY NOT BE A  
10:07:54 19 CONCERN OF THE PARTIES.

10:07:56 20 WHAT I'M LOOKING AT HERE, AND I'M NOT SURE WHETHER I WOULD  
10:08:00 21 STAY THIS ACTION JUST UNTIL THE MDL RULES, I'M LESS INCLINED TO  
10:08:06 22 DO THAT SINCE I HAVE SO MANY OF THEM, THAT, YOU KNOW, IF I HAD  
10:08:09 23 ONE CASE, I WOULDN'T WANT TO BE THE LONE PERSON WANDERING IN  
10:08:14 24 THE DESERT OUT THERE BEYOND ANYONE ELSE, BUT I HAVE THE  
10:08:19 25 OVERWHELMING MAJORITY OF THE FILED CASES, SO I THINK I NEED TO

10:08:22 1 MOVE FORWARD.

10:08:23 2 OKAY. THE OTHER THING I WANT TO MOVE INTO IS I HAVE TWO

10:08:29 3 SIDES OF A COIN. I'M ASKED TO EITHER GRANT A PRELIMINARY

10:08:34 4 INJUNCTION ON BEHALF OF AMAZON TO ENJOIN PERSONAL WEB FROM

10:08:42 5 PURSUING ANY OF, WE WILL CALL THEM CUSTOMER CASES, UNTIL THE

10:08:47 6 DECLARATORY RELIEF ACTION IS CONCLUDED. SO THAT WOULD HAVE

10:08:51 7 SCOPE BEYOND THE CASES I HAVE.

10:08:52 8 OR IN THE ALTERNATIVE, SEPARATE MOTION BY THE INDIVIDUAL

10:08:57 9 DEFENDANTS TO STAY THE CASE PENDING CONCLUSION.

10:09:01 10 YOU'VE BRIEFED IT AND INTERCHANGED THE WORDS, AND I KNOW

10:09:04 11 YOU ARE JUST GIVING ME ALTERNATIVES, AND I REALLY APPRECIATE

10:09:08 12 THAT. I AM MORE INCLINED TO STAY THE CASES ON AN INDIVIDUAL

10:09:14 13 BASIS AND THEN SUA SPONTE STAY, ISSUE AN ORDER TO SHOW CAUSE

10:09:19 14 WHY I SHOULDN'T STAY THE REMAINDER OF THEM.

10:09:21 15 I KNOW I DON'T HAVE, IF THERE'S NO SERVICE I HAVE TO WAIT

10:09:25 16 ON THAT, BECAUSE I THINK THAT MIGHT BE A MORE PRUDENT WAY TO

10:09:30 17 PROCEED.

10:09:32 18 SO LET'S GET INTO THE SUBSTANCE HERE NOW.

10:09:34 19 MR. SHERMAN: MAY I GET MY NOTES AT COUNSEL TABLE?

10:09:36 20 THE COURT: SURE.

10:09:37 21 MR. HADDEN: IF WE ARE GOING TO ARGUE, IT'S OUR

10:09:39 22 MOTION, CAN I ARGUE, YOUR HONOR?

10:09:40 23 THE COURT: SO I'M GOING TO MENTION A FEW ISSUES AND

10:09:42 24 THEN I WANT TO HEAR FROM YOU.

10:09:43 25 MR. HADDEN: SURE. THANK YOU, YOUR HONOR.

10:09:44 1 THE COURT: AND THIS COURTROOM, I'M STRUGGLING TO GET  
10:09:47 2 THE SOUND SYSTEM RIGHT. I'M NORMALLY IN A SMALLER COURTROOM.  
10:09:50 3 SO I NEED YOU RIGHT THERE, AND I'M SORRY YOU HAVE TO BE THERE.  
10:10:00 4 MY VIEW OF THE PAPERS IS THAT I AGREE WITH MR. HADDEN THAT  
10:10:03 5 THE AMAZON CASE SHOULD GO FORWARD TO RESOLUTION. AND I WILL  
10:10:09 6 SAY THAT I SPENT QUITE A BIT OF TIME, MR. SHERMAN, READING THE  
10:10:14 7 COMPLAINT AND READING THE EXPERT REPORTS THAT YOU PROVIDED,  
10:10:19 8 BECAUSE ON THE PRELIMINARY INJUNCTION, OF COURSE YOU NEEDED  
10:10:21 9 EVIDENCE.  
10:10:23 10 AND I AM NOT SATISFIED THAT YOU HAVE ADEQUATELY ALLEGED  
10:10:27 11 THE ROLE THAT RUBY ON RAILS PLAYS, OR THAT YOU EVEN CAN BASED  
10:10:36 12 ON DR. RUSS'S REPORT OR DECLARATION, I SUPPOSE. AND THAT WOULD  
10:10:43 13 BE MADE CLEAR TO ME IN INFRINGEMENT CONTENTIONS.  
10:10:47 14 BUT WHAT DOES SEEM CLEAR IS THAT THE PRELIMINARY  
10:10:53 15 INJUNCTION MOTION DOES MAKE CLEAR THAT A SUBSTANTIAL, IF NOT  
10:11:01 16 ALL OF THE ISSUES PRESENTED, OVERLAP AND CAN BE DETERMINED,  
10:11:09 17 BECAUSE WHAT -- IT APPEARS WHAT AMAZON IS ASKING FOR IN  
10:11:14 18 DECLARATORY RELIEF IS A FINDING THAT NEITHER S3 OR THE TOOL KIT  
10:11:19 19 TO CUSTOMERS THAT SHOWS HOW TO USE RUBY ON RAILS INFRINGES.  
10:11:28 20 AND IT DOESN'T HAVE TO BE COMPLETE OVERLAP, IT DOESN'T  
10:11:33 21 HAVE TO COMPLETELY RESOLVE THE CASE FOR ME TO ENJOIN OR STAY  
10:11:37 22 BASED ON THE CUSTOMER EXCEPTIONS.  
10:11:40 23 SO I'M INCLINED TO DO THAT. AND I DON'T SEE -- I MEAN,  
10:11:45 24 CERTAINLY EITHER WITH A PRELIMINARY INJUNCTION OR WITH A STAY,  
10:11:52 25 IF YOU WERE TO ADEQUATELY ALLEGE DIFFERENTLY IN YOUR

10:11:55 1 INFRINGEMENT CONTENTIONS, THAT WOULD BE GROUNDS TO EITHER  
10:11:59 2 MODIFY OR LIFT THE PRELIMINARY INJUNCTION OR LIFT THE STAY.  
10:12:01 3 AND SO THIS IS, YOU KNOW, IN A SENSE, I'M GOING TO GIVE  
10:12:04 4 YOU THE KEYS TO THE JAI HOUSE DOOR HERE IN LOCKING UP YOUR CASE  
10:12:09 5 TO MAKE THOSE PLEADINGS.  
10:12:11 6 BUT YOU BARELY MENTION RUBY ON RAILS. YOU DON'T MAP IT ON  
10:12:17 7 TO THE CLAIMED ELEMENTS AT ALL. IT'S NOT EVEN CLEAR THAT IT  
10:12:21 8 MAPS ON TO ALL OF THE CLAIMS THAT YOU'VE ASSERTED.  
10:12:24 9 IT'S NOT EVEN CLEAR TO ME WHAT CLAIMS YOU ARE ASSERTING OR  
10:12:29 10 HOW THIS -- I MEAN, THE COMPLAINT IS FINE AS FAR AS I'M  
10:12:33 11 CONCERNED.  
10:12:34 12 I MEAN, I KNOW WE USED TO DO A MUCH HIGHER LEVEL  
10:12:38 13 COMPLAINT. I'M NOT ASKING FOR AN AMENDMENT TO THE COMPLAINT,  
10:12:41 14 AND MAYBE THERE WILL BE A MOTION TO DISMISS ON THAT VERY BASIS,  
10:12:45 15 I'M NOT DECIDING THAT NOW, BUT THAT'S NOT MY CONCERN HERE.  
10:12:48 16 I REALLY WANT TO SEE INFRINGEMENT CONTENTIONS WHERE YOU  
10:12:49 17 HAVE TO ACTUALLY MAP IT.  
10:12:51 18 MR. SHERMAN: YOUR HONOR, IF I MAY, I OBVIOUSLY HAVE  
10:12:54 19 A BIT OF THE LABORING ORE HERE.  
10:13:02 20 YOUR HONOR INDICATED THAT THERE WAS CONSIDERATION OF THE  
10:13:06 21 EXPERT REPORTS, AND I APPRECIATE THAT. AND I'M NOT EXACTLY  
10:13:13 22 SURE WHICH MOTION NOW WE ARE TALKING ABOUT.  
10:13:17 23 THE COURT: WELL, THEY AREN'T PARTICULARLY DIFFERENT  
10:13:19 24 FROM EACH OTHER, ALTHOUGH THE EVIDENCE IS ONLY, I THINK,  
10:13:23 25 SUBMITTED.

10:13:24 1 MR. HADDEN: IN THE PRELIMINARY INJUNCTION.

10:13:28 2 THE COURT: IN THE PRELIMINARY INJUNCTION.

10:13:29 3 MR. HADDEN: YES, YOUR HONOR.

10:13:29 4 MR. SHERMAN: THE REASON I MENTION THAT, YOUR HONOR,

10:13:31 5 IS THIS, I DO BELIEVE THAT THERE MAY BE SOME ELEMENT OF CART

10:13:39 6 BEFORE HORSE.

10:13:40 7 THE COURT: OKAY.

10:13:41 8 MR. SHERMAN: OKAY. AND I TALK ABOUT CART BEFORE

10:13:43 9 HORSE BECAUSE, AND I ALLUDED TO THIS IN THE DATATERN FEDERAL

10:13:50 10 CIRCUIT DECISION, THIS IS WHAT THE COURT SAID, TO THE EXTENT

10:13:57 11 THAT APPELLEES ARGUE THAT THEY HAVE A RIGHT TO BRING THE DJ

10:14:04 12 ACTION SOLELY BECAUSE THEIR CUSTOMERS HAVE BEEN SUED FOR DIRECT

10:14:07 13 INFRINGEMENT, THEY ARE INCORRECT.

10:14:10 14 DATATERN HAS ACCUSED CUSTOMERS USING APPELLEE'S SOFTWARE

10:14:14 15 PACKAGES OF INFRINGING THE ASSERTED METHOD CLAIMS, BUT THERE

10:14:18 16 ARE NO ARGUMENTS THAT THERE'S A CASE FOR CONTROVERSY BETWEEN

10:14:20 17 DATATERN AND APPELLEES ON DIRECT INFRINGEMENT.

10:14:25 18 AND THAT ISSUE OF AMAZON'S CLAIM THAT WELL, SINCE WE ARE

10:14:37 19 INDEMNIFYING, THAT TAKES CARE OF IT ALL, AND WE HAVE STANDING

10:14:40 20 TO BE HERE, I BELIEVE -- AND ONCE YOUR HONOR DEALS WITH THE

10:14:50 21 12(B) MOTION TO DISMISS --

10:14:51 22 THE COURT: OKAY. SO MAYBE YOU JUST ANSWERED THE

10:14:53 23 QUESTION THAT WAS IN MY MIND AS YOU WERE SPEAKING. WHERE DID

10:14:55 24 YOU BRIEF THAT?

10:14:56 25 MR. SHERMAN: EXACTLY. YOUR HONOR, THAT'S NOT SET

10:14:59 1 FOR HEARING UNTIL --

10:15:00 2 THE COURT: OKAY. SO I DON'T WANT TO HEAR ABOUT

10:15:03 3 DATATERN TODAY.

10:15:04 4 MR. SHERMAN: BUT I BELIEVE IT'S --

10:15:05 5 THE COURT: YOU HAD THE OPPORTUNITY TO BRIEF THAT.

10:15:06 6 I'M NOT GOING TO --

10:15:08 7 MR. SHERMAN: YOUR HONOR, WE REFERENCED THAT IN OUR

10:15:09 8 PAPERS AND I --

10:15:11 9 THE COURT: OKAY. INCORPORATION BY REFERENCE IS A

10:15:14 10 PHRASE THAT'S WASTED. I DON'T LOOK AT OTHER PAPERS.

10:15:16 11 MR. SHERMAN: I DID NOT SAY IT WAS AN INCORPORATION

10:15:19 12 BY REFERENCE, YOUR HONOR.

10:15:20 13 THE COURT: I DON'T SEE A CITATION TO DATATERN.

10:15:35 14 WELL, IN YOUR OPPOSITION TO THE MOTION TO STAY, THERE'S NO

10:15:39 15 TABLE BECAUSE IT'S NOT LONG ENOUGH, AND IN YOUR OPPOSITION TO

10:15:43 16 THE PRELIMINARY INJUNCTION, YOU DIDN'T ADDRESS THAT ISSUE.

10:15:47 17 MR. HADDEN, AM I MISSING SOMETHING?

10:15:48 18 MR. HADDEN: NO. YOU ARE NOT, YOUR HONOR.

10:15:51 19 MR. SHERMAN: I DO REFERENCE IT.

10:15:53 20 THE COURT: WHERE?

10:15:54 21 MR. SHERMAN: I REFERENCE IT IN OUR OPPOSITION ON

10:15:56 22 PAGE 3 AT LINE 19.

10:15:57 23 THE COURT: WHICH BRIEF ARE YOU LOOKING AT?

10:15:59 24 MR. SHERMAN: I'M LOOKING AT DOCUMENT 37, THE

10:16:02 25 OPPOSITION TO PLAINTIFF'S CORRECTED MOTION TO ENJOIN DEFENDANTS

10:16:06 1 FROM LITIGATING --

10:16:08 2 THE COURT: AND WHICH PAGE ARE YOU ON?

10:16:10 3 MR. SHERMAN: YOUR HONOR, I AM ON PAGE 3, LINE 19,

10:16:18 4 THROUGH PAGE 4, LINE 5.

10:16:19 5 THE COURT: OKAY. THERE IT IS.

10:17:13 6 MR. HADDEN: I COULD RESPOND TO DATATERN IF YOU WOULD

10:17:16 7 LIKE, YOUR HONOR.

10:17:17 8 MR. SHERMAN RAISED THIS DATATERN ISSUE AFTER WE FILED OUR

10:17:22 9 COMPLAINT. AND WE FILED AN AMENDED COMPLAINT EXPLICITLY

10:17:27 10 ADDRESSING HIS CLAIM THAT THERE WAS NO JURISDICTION UNDER

10:17:29 11 DATATERN.

10:17:30 12 FIRST, WE DISAGREE WITH THAT. IN DATATERN, THERE WAS DJ

10:17:36 13 ACTION FILED BY MICROSOFT WITH RESPECT TO SOME PATENTS, AND I

10:17:38 14 THINK THE OTHER ONE WAS BY SAP.

10:17:40 15 AND THE FEDERAL CIRCUIT FOUND THAT FOR ALL BUT I THINK ONE

10:17:46 16 MICROSOFT CLAIM, THERE WAS JURISDICTION, BECAUSE THE

10:17:50 17 INFRINGEMENT CONTENTIONS EXPLICITLY CITED THE DOCUMENTS OF THE

10:17:54 18 SUPPLIER COMPANY, SAP OR MICROSOFT.

10:17:57 19 SO THAT, ALONE, WAS ENOUGH TO CREATE THE CASE OF

10:17:59 20 CONTROVERSY IMPLICITLY BETWEEN MICROSOFT AND THE PATENT.

10:18:03 21 THE COURT: AND SO IN THIS CASE, THE COMPLAINT

10:18:06 22 ALLEGES S3 HAS A SIGNIFICANT --

10:18:10 23 MR. HADDEN: ALL OVER THE PLACE. AND IF I GET TO MY

10:18:13 24 PRESENTATION, YOUR HONOR, I WILL EXPLAIN THAT TO THE COURT IN

10:18:15 25 DETAIL.

10:18:16 1 THE OTHER POINT IN DATATERN IS THERE WAS AN INDEPENDENT  
10:18:19 2 BASIS THAT THE COURT SAID EITHER THERE IS THIS KIND OF IMPLICIT  
10:18:23 3 ALLEGATION AGAINST THE TECHNOLOGY SUPPLIER, OR IF THE  
10:18:28 4 TECHNOLOGY SUPPLIER HAS AN INDEMNITY OBLIGATION, THAT, ALONE,  
10:18:33 5 CREATES STANDING.

10:18:34 6 SO WE HAVE AN INDEMNITY OBLIGATION.

10:18:36 7 THE COURT: SO THAT WOULD OPEN THE DOOR FOR YOU TO  
10:18:38 8 INTERVENE AS AN ALTERNATIVE.

10:18:39 9 MR. HADDEN: AS AN ALTERNATIVE.

10:18:40 10 BUT YOU DON'T HAVE TO INTERVENE IN 50 CASES, AND IT  
10:18:44 11 DOESN'T MAKE A LOT OF SENSE. SO WE AMENDED OUR COMPLAINT TO  
10:18:48 12 EXPLICITLY PLEAD OUR INDEMNITY OBLIGATION AND AGREEMENT.

10:18:53 13 I WOULD LIKE TO THINK THAT I'M HERE ON BEHALF OF ALL THESE  
10:18:56 14 CUSTOMERS BECAUSE THE UNIVERSE CHOSE ME, BUT IN FACT, WE ARE  
10:19:01 15 HERE BECAUSE AMAZON IS HERE.

10:19:02 16 THE COURT: MR. SHERMAN, I'M NOT GOING TO LET YOU  
10:19:05 17 CONTINUE, I THINK THAT'S PROBABLY NOT GOING TO BE A SUCCESSFUL  
10:19:08 18 ARGUMENT. I WILL LOOK AT IT.

10:19:09 19 MR. SHERMAN: THE REASON WHY I BELIEVE IT'S A  
10:19:11 20 SUCCESSFUL ARGUMENT, AND I DO NOT WISH TO RUN AFOUL OF EITHER  
10:19:16 21 COURT PROCEDURE OR JUST GOOD COMMON SENSE, WE DID A LOT MORE  
10:19:20 22 THAN INCORPORATE DATATERN BY REFERENCE IN OUR OPPOSITION  
10:19:24 23 PAPERS.

10:19:24 24 THE COURT: NO, NO, IT WAS THERE, AND I APOLOGIZE  
10:19:26 25 THAT I MISSED IT.

10:19:29 1 YOU KNOW, I WOULDN'T -- IT'S NOT FULLY DEVELOPED. I WILL  
10:19:36 2 LOOK AT IT, I WILL CERTAINLY LOOK AT IT.

10:19:38 3 MR. SHERMAN: THAT WAS MY POINT, YOUR HONOR.

10:19:41 4 THERE IS AN ORDER HERE, AND I DON'T CLAIM TO -- YOUR HONOR  
10:19:45 5 IS THE SUPREME AUTHORITY IN THIS COURTROOM ON THE ORDER, BUT  
10:19:50 6 THERE IS A CART BEFORE HORSE ELEMENT TO THIS.

10:19:54 7 WE HAVE DISCUSSED IN GENERAL TERMS, WILLINGNESS TO STAND  
10:19:59 8 DOWN UNTIL CERTAIN PREDICATE ACTIONS OCCUR, SUCH AS AN MDL.

10:20:08 9 MR. HADDEN SAID, WELL, IT WOULD HAVE BEEN INEFFICIENT TO  
10:20:11 10 INTERVENE IN 50 ACTIONS. YEAH, BUT YOU KNOW WHAT, IF THEY ARE  
10:20:15 11 ALL IN ONE COURTROOM, NOT QUITE AS BIG A DEAL, I WOULD SAY  
10:20:20 12 RESPECTFULLY TO THE COURT AND TO MR. HADDEN.

10:20:22 13 BUT ALSO, ALSO, GIVEN THAT THIS COURT'S AUTHORITY IS  
10:20:28 14 BOUNDED BY, IS THIS A CASE OR CONTROVERSY, AND YOUR HONOR HAS  
10:20:38 15 INDICATED A DESIRE TO THINK ABOUT THIS A LITTLE BIT MORE.

10:20:41 16 THE COURT: SURE.

10:20:41 17 MR. SHERMAN: I STARTED OUT BY SAYING WE FILED A  
10:20:43 18 12(B) (1) MOTION TO DISMISS, IT IS SET FOR HEARING ON JUNE 14TH,  
10:20:47 19 WE ARE HAPPY TO PROCEED IN A CONSENSUAL MANNER IN STAYING  
10:20:55 20 THINGS HERE ON THE INDIVIDUAL CASES.

10:20:58 21 OF COURSE WE WOULD LIKE THE MDL PROCEEDING TO GET GOING.  
10:21:02 22 BUT I THINK THAT THERE IS A, I WILL SAY IT AGAIN, A CART BEFORE  
10:21:11 23 HORSE ELEMENT TO THIS, AMAZON CAN PLACE ITSELF IN WHATEVER  
10:21:15 24 ARMOR IT WISHES AS THE PROTECTOR OF A CUSTOMER.

10:21:19 25 BY THE WAY, YOU NEED TO BE NOT ONLY A CUSTOMER, YOU NEED

10:21:22 1 TO BE A RESELLER.

10:21:23 2 THE COURT: WELL, YOU KNOW, I'M NOT GOING TO, I DON'T

10:21:26 3 THINK IT'S QUITE THAT NARROW.

10:21:28 4 HERE'S THE REASON THAT I FOUND YOUR -- WE WILL GET INTO

10:21:32 5 MORE OF THE TECHNICAL ISSUES, THE COMPLAINT IS PLED AT A VERY

10:21:35 6 HIGH LEVEL. BUT THEN I DID LOOK AT YOUR EXPERT'S DECLARATION,

10:21:40 7 AND I STILL DON'T UNDERSTAND, OR YOU HAVE NOT EXPLAINED, I

10:21:44 8 SHOULD SAY, AND THERE WILL BE PLENTY OF ROOM FOR ME NOT TO

10:21:48 9 UNDERSTAND, BUT I DON'T THINK YOU'VE EXPLAINED HOW AND WHAT

10:21:50 10 ROLE RUBY ON RAILS ACTUALLY PLAYS.

10:21:52 11 AND YOUR INFRINGEMENT CONTENTIONS WHICH OF COURSE AREN'T

10:21:56 12 DUE YET, THAT'S THE ACID TEST FOR YOU.

10:22:00 13 SO IT MAY BE THAT I NEED TO PARCEL OUT LIMITED STAYS TO

10:22:07 14 GET TO SOME TIME POINTS.

10:22:10 15 SO IT MAY BE, MR. HADDEN, IF THERE'S AN AGREEMENT TO STAY

10:22:15 16 ALL OF THE CASES BEFORE ME UNTIL I DECIDE THE MOTIONS TO

10:22:22 17 DISMISS ON CASE OR CONTROVERSY, AT LEAST UNTIL THAT TIME YOU

10:22:27 18 GET EXACTLY WHAT YOU WANT. AND THEN I WILL HAVE IT FULLY

10:22:30 19 BRIEFED.

10:22:30 20 HAVE YOU BRIEFED THE MOTION TO DISMISS?

10:22:34 21 MR. HADDEN: I THINK SO. YES.

10:22:36 22 THE COURT: IT'S ALL BRIEFED. OKAY. SO YOU'VE HAD A

10:22:39 23 CHANCE TO ADDRESS THE CASE FOR CONTROVERSY.

10:22:42 24 MR. HADDEN: YES.

10:22:43 25 THE COURT: EXCELLENT. AND I HAVE NOT HAD A CHANCE

10:22:44 1 TO REALLY STUDY THAT.

10:22:49 2 SO -- AND BY THE TIME YOU COME BACK, I WILL KNOW FROM THE

10:22:52 3 COMMITTEE WHETHER ALL THE CASES WILL BE MINE, WHICH IS AN ADDED

10:22:56 4 BENEFIT.

10:22:58 5 AND YOU INDICATE THAT THE OTHER JUDGES HAVE STAYED THE

10:23:01 6 CASES PENDING THE MDL DETERMINATION.

10:23:04 7 MR. SHERMAN: YES.

10:23:04 8 THE COURT: SO IN FACT, AMAZON AND ALL THE

10:23:08 9 DEFENDANTS, UNTIL MAY 31ST, HAVE THE RELIEF YOU ARE SEEKING.

10:23:11 10 MR. HADDEN: THAT'S TRUE, YOUR HONOR.

10:23:12 11 THE COURT: GOOD.

10:23:12 12 MR. HADDEN: IF I COULD JUST ADDRESS THE MDL POINT

10:23:15 13 JUST BRIEFLY. MDL IS NOT THE TOOL TO SOLVE THIS PROBLEM.

10:23:20 14 THE COURT: NO, IT'S NOT.

10:23:21 15 MR. HADDEN: RIGHT. BECAUSE AT THE END OF THE MDL,

10:23:24 16 ALL THE CASES GO BACK TO THEIR HOME COURTS FOR 50 DIFFERENT

10:23:27 17 TRIALS.

10:23:27 18 THE COURT: YEP.

10:23:28 19 MR. HADDEN: AND THAT'S WHY THE FEDERAL CIRCUIT IN

10:23:30 20 ROCKSTAR, GOOGLE AND NINTENDO SAID NO. THE SOLUTION HERE IS

10:23:35 21 CUSTOMER GETS STAYED, ONE CASE GOES FORWARD.

10:23:39 22 THE COURT: YEAH.

10:23:40 23 SO AS I SAID, I'M NOT PREPARED TO RULE ON THE CASE OR

10:23:43 24 CONTROVERSY ISSUE, SO I'M JUST GOING TO COMMENT THAT IF I FIND

10:23:48 25 THAT AMAZON CAN BRING ITS SUIT, I WOULD, I WOULD BE INCLINED TO

10:23:55 1 GRANT THE PRELIMINARY INJUNCTION.

10:23:57 2 I THINK THAT THIS IS A CUSTOMER SUIT. I DO THINK THAT --

10:24:02 3 I MEAN, I AGREE WITH YOUR REPLY STATEMENT, MR. HADDEN, THAT I

10:24:05 4 ACTUALLY THINK THAT YOUR DECLARATORY RELIEF ACTION CAN RESOLVE

10:24:09 5 THE ENTIRE CASE BECAUSE YOU ALSO ALLEGE OR SEEK DECLARATORY

10:24:16 6 RELIEF ON THE TOOL KIT.

10:24:17 7 MR. HADDEN: IN ADDITION, YOUR HONOR, THIS CASE

10:24:19 8 SHOULD BE BARRED, RIGHT. WE HAVE LITIGATED THIS EXACT ISSUE.

10:24:22 9 THE COURT: WELL, AND I DON'T NEED TO DECIDE THAT

10:24:24 10 EITHER. I DON'T KNOW WHETHER THEY SHOULD BE BARRED OR NOT.

10:24:28 11 I'M ACTUALLY TRYING TO STAY WITH THE CUSTOMER USE ISSUE.

10:24:34 12 AND I DON'T AGREE THAT -- AND YOU CITED THE KAHN CASE, I

10:24:39 13 THINK.

10:24:39 14 MR. SHERMAN: YES, WE DID.

10:24:40 15 THE COURT: I THINK KAHN HAS BEEN LEFT BEHIND IN THE

10:24:44 16 DUST. AND I THINK KATZ STARTED THAT, AND I REALLY -- IT SAYS

10:24:48 17 WHAT YOU SAY, AS YOU REPRESENT IT, BUT I JUST THINK IT HAS BEEN

10:24:53 18 SUPERSEDED BY FRESH THINKING ON THE BENEFIT OF THIS RULE.

10:24:58 19 MR. SHERMAN: YOUR HONOR, I SENSE THAT THE COURT IS

10:25:04 20 EXTREMELY COMFORTABLE RIGHT NOW THAT, GIVEN A VOLUNTARY STAY OF

10:25:10 21 PROCEEDINGS IN THE TRIAL COURT, THAT JUNE 14TH WILL COME, WE

10:25:15 22 WILL SEE WHAT WILL HAPPEN WITH THE MDL, BECAUSE YOU ARE NOT

10:25:19 23 STAYING OR GOING TO THE MDL PANEL IN CHICAGO, I TAKE IT.

10:25:23 24 THE COURT: I'M NOT GOING. JUDGES DON'T GO TO THINGS

10:25:27 25 LIKE THAT.

10:25:27 1 MR. SHERMAN: YOU ARE NOT STAYING MY PARTICIPATING --

10:25:29 2 THE COURT: NO, NO, NOT AT ALL.

10:25:31 3 SO IN FACT, I GUESS IT WOULD ONLY BE A DISCOVERY -- I'M

10:25:34 4 NOT SURE -- I WOULD ONLY STAY, MAYBE DISCOVERY, BECAUSE I DON'T

10:25:38 5 KNOW WHAT ELSE --

10:25:40 6 MR. HADDEN: NOTHING IS GOING ON, BUT I DO THINK IT'S

10:25:42 7 IMPORTANT FOR THE MDL PANEL TO KNOW IF -- THAT THIS COURT IS

10:25:47 8 CONSIDERING GRANTING THE PI INJUNCTION.

10:25:49 9 THE COURT: SO -- BUT, WELL, MR. SHERMAN, IF THE

10:25:53 10 OTHER COURTS HAVE STAYED THEIR ACTIONS, THEY DIDN'T PROHIBIT

10:25:56 11 THE MDL FROM GOING FORWARD EITHER. SO IS THERE MAGIC

10:26:00 12 LANGUAGE?

10:26:01 13 MR. SHERMAN: I HAVE NOT BEEN BEFORE A JUDGE LIVE YET

10:26:04 14 IN ANY OF THESE CASES WHERE THIS ISSUE WAS IN THIS DETAIL.

10:26:07 15 THE COURT: WELL, FOR BETTER OR FOR WORSE, I ALWAYS

10:26:10 16 HAVE YOU COME IN FOR YOUR MOTIONS HERE.

10:26:12 17 MR. SHERMAN: IT'S ALWAYS A PLEASURE TO SEE YOU,

10:26:13 18 YOUR HONOR.

10:26:14 19 THERE'S JUST A COUPLE OF POINTS THAT ARE SORT OF OUT THERE

10:26:17 20 NOW. THE FIRST IS THE MDL, WHICH WE INTEND TO PROCEED.

10:26:20 21 OBVIOUSLY, IF COUNSEL WERE TO REPRESENT, I'M SURE HE

10:26:23 22 WOULDN'T, BUT IF THE COURT IS GOING TO GRANT THE PI THAT

10:26:26 23 YOUR HONOR HAS ALREADY INDICATED, FOR EXAMPLE, THAT YOU HAVEN'T

10:26:28 24 EVEN GOTTEN INTO THE ISSUE OF THE PRIOR AMAZON ACTION, SO I'M

10:26:34 25 SURE COUNSEL WOULDN'T GO THAT FAR.

10:26:37 1 BUT YOU'VE SUGGESTED ON SEVERAL OCCASIONS THIS MORNING,  
10:26:43 2 READING THE COMPLAINT, READING THE COMPLAINT, READING THE  
10:26:46 3 COMPLAINT, AND INTERESTINGLY, I'M TOLD BY MY VERY, VERY  
10:26:52 4 EXPERIENCED PATENT COUNSEL, MR. SETH, MR. MONROE, AND  
10:26:58 5 MR. MACEIKO, THAT WE WENT FAR, FAR, FAR BEYOND THE TWOMBLY  
10:27:03 6 IQBAL REQUIREMENTS. THAT'S WHAT THEY TOLD ME, FOR BETTER OR  
10:27:07 7 FOR WORSE.

10:27:07 8 THE COURT: I THINK THE COMPLAINT IS FINE. I DIDN'T  
10:27:09 9 HAVE ANY PROBLEM WITH IT. I AGREE WITH YOU.

10:27:12 10 MR. SHERMAN: I HAVE A PROBLEM WITH IT, YOUR HONOR.  
10:27:14 11 WE WILL BE AMENDING THE COMPLAINT.

10:27:15 12 AND I'VE INDICATED THAT TO THE MDL PANEL, THAT WAS IN OUR  
10:27:20 13 REPLY. I EXPECT THAT THE AMENDMENT TO THE COMPLAINT WILL BE  
10:27:26 14 READY IN APPROXIMATELY TWO WEEK'S TIME. BUT THAT WAS AN FYI.

10:27:31 15 THE COURT: OKAY. THAT'S FINE, SURE.

10:27:33 16 MR. SHERMAN: BUT ALSO, YOUR HONOR, SINCE WE ARE ON  
10:27:35 17 THE SUBJECT OF STAY, BY THE WAY, IN EARLY FEBRUARY, THE PTAB  
10:27:44 18 ISSUED AN ORDER ON ONE OF THE PATENTS THAT IS THE SUBJECT OF  
10:27:51 19 THIS LITIGATION, THE '310 PATENT. THIS WAS IN THE CASE OF  
10:27:57 20 PERSONAL WEB AND APPLE COMPUTER. AND THIS INTER PARTES REVIEW  
10:28:04 21 RESULTED IN A PTAB DECISION INVALIDATING THE '310 PATENT.

10:28:16 22 THIS WAS THE SAME PANEL THAT WAS REVERSED BY THE FEDERAL  
10:28:21 23 CIRCUIT.

10:28:21 24 THE COURT: I MEAN, I GET REVERSED, AND I DON'T THINK  
10:28:25 25 ANYONE THINKS I'M WRONG FOREVER MORE.

10:28:30 1 MR. SHERMAN: YOUR HONOR, YOU ARE NOT GOING TO FIND  
10:28:32 2 ANY DISAGREEMENT. THIS IS MORE OF AN FYI, THIS WAS NOT IN OUR  
10:28:36 3 PAPERS, THIS WAS NOT IN COUNSEL'S PAPERS, THIS IS A RECENT  
10:28:39 4 DEVELOPMENT, THERE HAS BEEN AN ORDER BY THE PTAB, IT IS BEING  
10:28:42 5 APPEALED TO THE FEDERAL CIRCUIT.

10:28:43 6 THE COURT: OKAY. SO NO ONE HAS ASKED ME TO STAY THE  
10:28:46 7 CASES BECAUSE OF IPR PROCEEDINGS.

10:28:48 8 MR. HADDEN: NO, YOUR HONOR.

10:28:48 9 MR. SHERMAN: EXACTLY.

10:28:49 10 THE COURT: THAT'S FINE. I JUST WANTED TO SAY THAT.

10:28:52 11 MR. SHERMAN: I JUST WANTED TRANSPARENCY.

10:28:54 12 THE COURT: LET ME JUST SAY, MR. SHERMAN, IF YOU WANT  
10:28:56 13 TO AMEND THE COMPLAINT, THAT'S FINE. AND IF IT'S OPPOSED OR  
10:28:59 14 STIPULATED OR WHATEVER, IT COULD CAUSE ME TO TERMINATE ALL  
10:29:02 15 PENDING MOTIONS, BECAUSE THEY DON'T RELATE TO THE OPERATIVE  
10:29:06 16 PLEADING.

10:29:07 17 MR. SHERMAN: WELL --

10:29:08 18 THE COURT: SO PLEASE UNDERSTAND THAT, WHICH COULD  
10:29:11 19 CAUSE YOU TO LOSE THE JUNE 14TH DATE.

10:29:13 20 MR. SHERMAN: I --

10:29:19 21 THE COURT: I SAY THIS BECAUSE I DON'T WANT YOU TO BE  
10:29:21 22 UNAWARE OF POTENTIAL CONSEQUENCES.

10:29:26 23 MR. SHERMAN: THOSE ARE NOT CONSEQUENCES THAT WOULD  
10:29:27 24 NECESSARILY CAUSE ME TO STAY UP AT NIGHT. I MEAN, THEY ARE  
10:29:30 25 CONSEQUENCES, BUT THIS IS WHAT HAPPENS IN THE CONDUCT OF

10:29:33 1 LITIGATION.

10:29:34 2 THE COURT: OKAY.

10:29:34 3 MR. SHERMAN: THE POINT IS THAT WE'VE SPENT, MY

10:29:37 4 CLIENT HAS INVESTED CONSIDERABLE RESOURCES STUDYING THIS, THE

10:29:42 5 COMPLEXITIES OF THE HDT PROTOCOL. AND THESE PATENTS PREDATE

10:29:51 6 THE MODERN DAY INTERNET AS WE KNOW IT.

10:29:53 7 SO THE POINT IS --

10:29:54 8 THE COURT: THAT'S WHY THEY ARE EXPIRED.

10:29:58 9 MR. SHERMAN: IF EVERYTHING STAYS ON TRACK AND

10:30:05 10 NOTHING IS TAKEN OFF CALENDAR, YOUR HONOR, I WOULD LIKE THE

10:30:09 11 OPPORTUNITY, IF YOU WOULD LIKE, I WILL MAKE A MOTION, I WILL

10:30:13 12 MEET AND CONFER WITH MR. HADDEN, YOU KNOW, THE DECLARATION OF

10:30:19 13 MR. SHENOY WAS FILED IN THE REPLY PAPERS, AND THEY COULD HAVE

10:30:23 14 FILED IT IN THEIR MOVING PAPERS.

10:30:25 15 THE COURT: I KNOW.

10:30:25 16 MR. SHERMAN: AND I'M NOT CAPABLE STANDING HERE --

10:30:30 17 THE COURT: SURE.

10:30:30 18 MR. SHERMAN: -- OF REFUTING THAT IN ANY --

10:30:34 19 THE COURT: WELL, AND I AM VERY SYMPATHETIC TO THAT

10:30:36 20 POSITION YOU WERE PUT IN TO HAVE THIS LENGTHY REPORT. BUT, YOU

10:30:41 21 KNOW, I AM REALLY LOOKING AT, YOU DIDN'T HEAR ME MENTION THAT

10:30:45 22 AS A BASIS FOR MY TENTATIVE LEANING TO GRANT THE MOTION. I WAS

10:30:51 23 BASING IT ON YOUR COMPLAINT AND YOUR EXPERT.

10:30:54 24 SO, YOU KNOW, I REALLY UNDERSTAND GETTING HIT WITH A

10:31:00 25 200-PAGE SUPPLEMENT IN THE REPLY BRIEF IS VERY DIFFICULT. BUT

10:31:06 1 I -- I WOULD, OF COURSE, RATHER SEE A MOTION FOR PRELIMINARY  
10:31:13 2 INJUNCTION AFTER THE INFRINGEMENT CONTENTIONS ARE FILED, BUT  
10:31:16 3 I'M NOT GOING TO HAVE THAT LUXURY.

10:31:18 4 AND THAT'S WHY I SUGGESTED THAT EVEN IF I WERE TO GRANT,  
10:31:22 5 EITHER FORM OF RELIEF, THAT I WOULD MAKE IT CLEAR THAT YOU  
10:31:27 6 COULD SEEK MODIFICATION OF AN INJUNCTION OR LIFTING OF A STAY  
10:31:32 7 UPON FILING OF INFRINGEMENT CONTENTIONS THAT DO THE MAPPING  
10:31:35 8 THAT WOULD BE REQUIRED THERE.

10:31:37 9 AND I THINK -- BECAUSE BOTH A STAY AND AN INJUNCTION HAVE  
10:31:41 10 TO BE NARROWLY TAILORED IN A SHORTENED TIME AS POSSIBLE TO  
10:31:47 11 PROTECT THE INTEREST OF THE PARTIES.

10:31:49 12 AND SO WITH THIS COMPLAINT, WHICH I FIND TO BE, IT'S FINE,  
10:31:52 13 IT'S COMPLETELY ADEQUATE, BUT --

10:31:55 14 MR. SHERMAN: THANK YOU.

10:31:55 15 THE COURT: BUT IT ISN'T ADEQUATE FOR THIS MOTION.  
10:31:59 16 HENCE, DR. RUSS'S SUPPLEMENTAL, AND HE DIDN'T SAY WHAT I WOULD  
10:32:05 17 HAVE EXPECTED HOPED HIM TO SAY.

10:32:07 18 AND SO I SAT BACK FROM THAT AND I -- IN WHAT I COULD SEE  
10:32:11 19 AT THIS POINT, IT MAY BE THAT DR. RUSS IS UNABLE TO MAP THE  
10:32:19 20 PRODUCTS ON TO THESE CLAIMS UNTIL YOU HAVE SOME DISCOVERY. AND  
10:32:23 21 I APPRECIATE THAT.

10:32:24 22 MR. SHERMAN: AND THAT'S OUR POSITION AS WELL,  
10:32:26 23 YOUR HONOR.

10:32:27 24 THE COURT: SURE. AND I'M NOT GOING TO LET YOU HAVE  
10:32:28 25 THAT RIGHT NOW. BUT --

10:32:30 1 MR. SHERMAN: I'M SORRY, DID YOU SAY YOU ARE NOT  
10:32:32 2 GOING TO LET US?  
10:32:33 3 THE COURT: THERE IS GOING TO BE A STAY, THERE WON'T  
10:32:37 4 BE ANY DISCOVERY, CORRECT?  
10:32:38 5 MR. SHERMAN: WHAT I WAS SAYING, YOUR HONOR, IS WE  
10:32:40 6 ARE PREPARING WITHOUT THE BENEFIT OF ANY DISCOVERY, TO PROPOSE  
10:32:46 7 OUR AMENDED COMPLAINT.  
10:32:47 8 THE COURT: THAT'S FINE.  
10:32:48 9 MR. SHERMAN: OKAY.  
10:32:49 10 THE COURT: THAT, YOU CAN DO.  
10:32:50 11 ALL RIGHT. SO HERE'S WHAT I THINK I'M GOING TO DO TODAY,  
10:32:54 12 WE'VE GOT, BECAUSE SO MANY BALLS ARE IN THE AIR, AND  
10:32:58 13 MR. SHERMAN IS ABSOLUTELY CORRECT THAT I HAVE TO BE CERTAIN OF  
10:33:01 14 SUBJECT MATTER JURISDICTION, SO IF THE AMAZON CASE CAN'T  
10:33:06 15 PROCEED, THEN THERE'S A WHOLE DIFFERENT SITUATION, PERHAPS  
10:33:09 16 INTERVENTION WILL HAVE TO BE CONSIDERED AT THAT POINT, BUT  
10:33:13 17 BASED UPON THE AGREEMENT OF THE PARTIES, I AM GOING TO STAY  
10:33:16 18 THIS CASE WITH THE EXCEPTION OF MDL ACTIVITY UNTIL JUNE 14TH  
10:33:22 19 WHEN YOU RETURN TO COURT ON THE PREVIOUSLY FILED MOTION TO  
10:33:26 20 DISMISS.  
10:33:27 21 IN THE EVENT THAT AN AMENDED PLEADING IS FILED, THEN I  
10:33:32 22 WILL HAVE TO LOOK AT IT. BUT I MAY TERMINATE WITHOUT  
10:33:36 23 PREJUDICE, THE PENDING MOTIONS AND CONTINUE THE STAY UNTIL  
10:33:41 24 THERE HAS BEEN -- WELL, I GUESS THERE WILL BE A FURTHER  
10:33:49 25 MOTION -- I MEAN, THE MOTION TO DISMISS IS FILED BY THE

10:33:52 1 DEFENDANTS, YOU'RE OPPOSING THE MOTION BASED ON NO CASE OR  
10:33:57 2 CONTROVERSY.

10:33:58 3 NO, I GUESS UNDER DEC RELIEF, IT'S YOUR MOTION. I'M  
10:34:02 4 SORRY, I'M GETTING CONFUSED.

10:34:04 5 IN THE AMAZON CASE, DO YOU WANT TO AMEND?

10:34:06 6 MR. SHERMAN: NO, WE WISH TO AMEND --

10:34:08 7 THE COURT: SO THEN THE AMAZON --

10:34:10 8 MR. HADDEN: THEY WANT TO FILE 55 NEW CUSTOMER SUITS.

10:34:14 9 THE COURT: SO THEN THE AMAZON CASE MIGHT HAVE TO BE  
10:34:17 10 AMENDED.

10:34:18 11 MR. HADDEN: YOUR HONOR, AT SOME POINT, THEY FILED 50  
10:34:20 12 COMPLAINTS. WE BROUGHT OUR PI MOTION BASED ON THOSE  
10:34:25 13 COMPLAINTS. AND AS YOUR HONOR RECOGNIZED, THE COMPLAINTS AS  
10:34:28 14 PLED, THEIR THEORY MAPS TO AMAZON.

10:34:31 15 NOW IF THEY ARE GOING TO CONCOCT SOME NEW COMPLAINT, I  
10:34:36 16 DON'T KNOW WHERE THAT LEADS US, THEY CAN'T JUST TRYING TO PLEAD  
10:34:40 17 THE THEIR WAY OUT OF THE FACT THEY ARE ACCUSING AMAZON.

10:34:44 18 THE COURT: WELL, I DON'T WANT TO MAKE THIS MORE  
10:34:46 19 DIFFICULT. I WANTED TO GIVE MR. SHERMAN THE OPPORTUNITY.

10:34:49 20 MR. HADDEN: I UNDERSTAND, YOUR HONOR.

10:34:49 21 THE COURT: SO -- AND I GOT BALLED UP IN THIS. SO  
10:34:52 22 THE MOTION TO DISMISS IS YOUR MOTION --

10:34:57 23 MR. HADDEN: NO, THEIR MOTION.

10:34:58 24 THE COURT: YOUR MOTION TO DISMISS THE DECLARATORY  
10:35:00 25 RELIEF BASED ON NO CASE OR CONTROVERSY. OKAY.

10:35:03 1 AND THAT'S SET FOR JUNE 14TH. AND NO AMENDMENT IS GOING  
10:35:06 2 TO BE FILED THERE. THAT'S GOING TO GO FORWARD. OKAY. GOOD.  
10:35:10 3 I'M GOING TO STAY THIS ACTION UNTIL JUNE 14TH WITH THE  
10:35:16 4 EXCEPTION OF THE MDL ACTIVITY, OF COURSE.  
10:35:19 5 MR. SHERMAN: AND IF WE CHOOSE TO FILE AN AMENDED --  
10:35:23 6 MR. HADDEN: WELL, NO, IF IT IS STAYED, THEY  
10:35:28 7 SHOULDN'T BE FILING THE AMENDED COMPLAINT.  
10:35:30 8 THE COURT: SO THEN YOU CAN'T AMEND.  
10:35:31 9 MR. SHERMAN: I WILL SEND COUNSEL THE PROPOSED  
10:35:33 10 AMENDED -- I DON'T REALLY UNDERSTAND HIS POINT.  
10:35:35 11 I DON'T THINK THAT COUNSEL IS SUGGESTING THAT BY ANY  
10:35:39 12 CONSTRUCTION OF THE FEDERAL RULES OF CIVIL PROCEDURE, THAT WE  
10:35:42 13 ARE COMPLETELY DENIED ANY OPPORTUNITY EARLY IN THE CASE BEFORE  
10:35:45 14 THERE'S BEEN ANY PROCEEDINGS TO SEEK TO AMEND OUR OWN  
10:35:47 15 COMPLAINTS.  
10:35:50 16 THE COURT: YOU PROBABLY HAVE TO FILE A MOTION  
10:35:51 17 BECAUSE IT'S MORE THAN --  
10:35:54 18 MR. HADDEN: YEAH.  
10:35:54 19 MR. SHERMAN: THERE'S BEEN NO RESPONSIVE PLEADING  
10:35:56 20 FILED.  
10:35:57 21 THE COURT: YOU HAVEN'T FILED A MOTION TO DISMISS THE  
10:35:59 22 INDIVIDUAL CASES.  
10:36:01 23 MR. HADDEN: NO. WE'VE ANSWERED.  
10:36:04 24 THE COURT: SO I THINK YOU MIGHT BE ABLE TO -- OKAY.  
10:36:16 25 SORRY. THIS PUZZLE IS GETTING TO ME WITH THE TWO CASES. IF I

10:36:22 1 STAY ALL OF THE INDIVIDUAL CASES, THEN YOU CAN'T FILE A MOTION

10:36:25 2 TO AMEND.

10:36:26 3 MR. SHERMAN: I CAN SEND HIM A PROPOSED MOTION.

10:36:28 4 THE COURT: YOU COULD SEND --

10:36:30 5 MR. HADDEN: HE COULD SEND ME WHATEVER HE WANTS.

10:36:31 6 MR. SHERMAN: I'M JUST TRYING TO BE PRACTICAL ABOUT

10:36:34 7 THIS, AND THE FACT IS THAT EVERY ONE OF THE INDIVIDUAL CASES,

10:36:38 8 BY AGREEMENT BETWEEN COUNSEL, WE HAVE BEEN QUITE COOPERATIVE UP

10:36:43 9 THROUGH NOW.

10:36:44 10 THE COURT: GOOD.

10:36:45 11 MR. SHERMAN: FOLKS HAVE SAID, HEY, CAN WE HAVE AN

10:36:48 12 EXTENSION, SURE, WE GOT MDL COMING UP.

10:36:51 13 THE COURT: SURE.

10:36:51 14 MR. SHERMAN: NOW ALL THE SUDDEN I'M HEARING

10:36:53 15 SOMETHING ELSE. WE'VE ANSWERED NO, THEY HAVEN'T ANSWERED.

10:36:56 16 MAYBE I WILL GET ANSWERS ON MONDAY TO ALL 55.

10:36:59 17 ALL I'M SUGGESTING IS THAT YES, THIS IS COMPLICATED, BUT I

10:37:03 18 DON'T BELIEVE THAT THAT SUSPENDS THE OPERATION OF THE NORMAL

10:37:07 19 RULES OF AMENDMENT BECAUSE WE INVESTED A LOT BEFORE WE FILED

10:37:11 20 AND WE ARE INVESTING A LOT --

10:37:13 21 THE COURT: SO NOW YOU ARE SAYING YOU ARE NOT

10:37:15 22 AGREEING TO A STAY UNTIL JUNE 14TH?

10:37:17 23 MR. SHERMAN: YOUR HONOR, I AM AGREEABLE TO A STAY.

10:37:20 24 THE COURT: BUT THEN YOU CAN'T FILE YOUR AMENDMENT.

10:37:22 25 MR. SHERMAN: OKAY. SO I WILL SEND COUNSEL BY

10:37:25 1 PROPOSED AMENDED COMPLAINT.

10:37:26 2 THE COURT: OKAY.

10:37:27 3 MR. SHERMAN: AND I WILL INDICATE TO THE MDL PANEL

10:37:29 4 THAT WE HAVE A PROPOSED -- I ALREADY HAD INDICATED TO THE MDL

10:37:33 5 PANEL THAT. I AM TRULY SEARCHING FOR SOMETHING THAT IS

10:37:38 6 PRACTICAL AND EFFICIENT.

10:37:40 7 THE COURT: ALL RIGHT.

10:37:40 8 MR. SHERMAN: RECOGNIZING THAT --

10:37:42 9 THE COURT: THANK YOU.

10:37:43 10 MR. SHERMAN: -- THIS IS COMPLICATED.

10:37:44 11 THE COURT: SO THIS IS COMPLICATED.

10:37:45 12 AND PUTTING ASIDE THE MDL, IF I HAVE MERELY 30 CASES, I

10:37:50 13 DON'T THINK I WOULD ACT VERY DIFFERENTLY THAN IF I HAVE 56.

10:37:53 14 BUT WE WILL NEED TO DISCUSS EITHER PROCEEDING ALONG THE

10:37:57 15 LINES OF THE AMAZON CASE, THAT'S WHAT MR. HADDEN HAS SUGGESTED,

10:38:03 16 OR LETTING YOU LITIGATE YOUR BEST CASE.

10:38:06 17 MR. SHERMAN: THAT'S FINE.

10:38:06 18 THE COURT: I MEAN, AS ONE -- AND STAYING ALL THE

10:38:10 19 REST, AND SEEING HOW THE BEST CASE COMES OUT. AND IF YOU LOSE

10:38:13 20 THE BEST CASE, THEN I -- YOU KNOW, I THINK EVEN A FAIRLY

10:38:20 21 MIDDLING MEDIATOR CAN TAKE CARE OF THE REST OF THE CASES.

10:38:23 22 BECAUSE IF I NEEDED TO SCHEDULE 30 TRIALS, I WANT YOU TO KNOW

10:38:27 23 THAT MY NEXT AVAILABLE TRIAL DATE IS IN FEBRUARY OF 2022.

10:38:31 24 MR. SHERMAN: OH, I WAS CLOSE.

10:38:33 25 THE COURT: SO IF I WERE TO DO BACK-TO-BACK PATENT

10:38:36 1 TRIALS, IT WOULD TAKE ME TO MY RETIREMENT.

10:38:39 2 SO THAT'S WHY I SAY WE ARE PROBABLY GOING TO PICK, AND I

10:38:43 3 WILL LET YOU PICK IT, I MEAN, YOU WILL HAVE HAD -- I WILL GIVE

10:38:46 4 YOU AMPLE OPPORTUNITY.

10:38:48 5 MR. SHERMAN: THAT'S FINE.

10:38:48 6 THE COURT: AND THEN TO -- BUT WE WILL TALK ABOUT

10:38:51 7 THAT. I HAVE TO MANAGE 30 CASES, UNLESS THE MDL PANEL DECIDES

10:38:54 8 TO SEND THEM TO NEW YORK OR SOMEWHERE ELSE AND SOME OTHER OF MY

10:38:57 9 COLLEAGUES WILL COME UP WITH A BETTER WAY OF HANDLING THEM.

10:39:01 10 MR. SHERMAN: I WOULD SAY A FAIR TO MIDDLING TRIAL

10:39:04 11 LAWYER, IF HE OR SHE THEY LOST THAT FIRST CASE, MIGHT FIGURE

10:39:06 12 OUT WHAT TO DO.

10:39:07 13 THE COURT: YOU KNOW, JUDGE ALSUP INSTITUTED HIS

10:39:09 14 SHOOTOUT LAST YEAR WITH CLAIMS WHERE EACH SIDE PICKED ITS BEST

10:39:13 15 CASE AND HE HAD A TRIAL ON THOSE. OF COURSE HIS SHOOTOUT WAS

10:39:18 16 THE HOCKEY KIND, I THOUGHT IT WAS A DUEL OF 50 PACES, BUT IT

10:39:23 17 TURNED OUT TO BE MORE LIKE THE DUEL THAN THE HOCKEY SHOOTOUT.

10:39:27 18 ALL RIGHT. I THINK WE HAVE A PLAN RIGHT NOW. I WILL

10:39:29 19 ANTICIPATE SEEING YOU AGAIN ON JUNE 14TH. I WILL, BY AGREEMENT

10:39:34 20 OF THE PARTIES, STAY THE INDIVIDUAL CASES UNTIL THAT DAY, WITH

10:39:38 21 THE EXCEPTION OF ANY ACTIVITY ON THE MDL ACTION.

10:39:42 22 I WILL, AND I'M STAYING IT FOR THE PURPOSE OF RESOLVING

10:39:48 23 THE COURT'S JURISDICTION FIRST, WHICH I AM COMPELLED TO DO.

10:39:52 24 AND THAT ISSUE IS BRIEFED IN THE PENDING MOTION TO DISMISS.

10:39:54 25 SO I THINK THAT IS THE PROPER THING TO DO. I THINK

10:39:57 1 MR. HADDEN, YOUR CLIENTS ARE ADEQUATELY PROTECTED.

10:40:01 2 ON JUNE 14TH, IT WOULD CERTAINLY BE MY HOPE THAT I CAN

10:40:06 3 GIVE YOU AN ORAL RULING, AND SO THEN I CAN DECIDE ON WHAT

10:40:10 4 HAPPENS WITH THE STAY BEYOND THAT. AND THEN I MAY BE PREPARED

10:40:14 5 TO GIVE YOU A FURTHER RULING FROM THE BENCH TO BE FOLLOWED UP

10:40:17 6 WITH THE WRITTEN ON THE PRELIMINARY INJUNCTION AND THE MOTION

10:40:21 7 TO STAY.

10:40:22 8 I WILL HAVE THE BENEFIT OF THE MDL PANEL'S DETERMINATION,

10:40:27 9 USUALLY, I HEAR FROM THEM WITHIN A WEEK OF THE HEARING.

10:40:32 10 MR. SHERMAN: WOULD YOUR HONOR CARE TO SEE A CHAMBERS

10:40:38 11 COPY OF A NON-FILED, TO-BE-FILED AMENDED COMPLAINT?

10:40:44 12 THE COURT: I THINK THAT WHAT I'M GOING TO DO THERE,

10:40:46 13 BECAUSE THERE'S A STAY, IS THAT GO AHEAD AND SEND THE INFORMAL

10:40:51 14 COPY TO MR. HADDEN, AND IF THE TWO OF YOU AGREE THAT IT WOULD

10:40:55 15 BE OF BENEFIT TO ME, YOU CAN SEND IT TO ME JOINTLY.

10:40:58 16 BUT I'M NOT GOING TO -- BECAUSE OTHERWISE I DON'T WANT IT

10:41:01 17 TO LOOK LIKE, MR. HADDEN, WHAT I GIVE WITH ONE HAND, I TAKE

10:41:04 18 BACK WITH THE OTHER.

10:41:05 19 MR. HADDEN: UNDERSTOOD, YOUR HONOR.

10:41:06 20 ON THE PI MOTION ITSELF, ARE WE GOING TO HAVE AN ARGUMENT

10:41:09 21 ON THAT ON JUNE 14TH OR --

10:41:11 22 THE COURT: SO I WON'T HAVE TIME ON JUNE 14TH.

10:41:15 23 LET'S NOW, WE HAVE --

10:41:17 24 MR. HADDEN: I'M HAPPY TO ARGUE IT NOW.

10:41:19 25 THE COURT: AND I THINK YOU ARE PREPARED FOR IT NOW.

10:41:21 1 SO LET ME, YOU KNOW, I GUESS MR. HADDEN, I WANT TO HEAR  
10:41:25 2 FROM YOU AS TO WHY THE PRELIMINARY INJUNCTION WOULD BE A BETTER  
10:41:30 3 OUTCOME THAN THE STAY, OTHER THAN THE OBVIOUS THAT IT WOULD  
10:41:35 4 AFFECT ANY FUTURE CASES AND CASES IN OTHER JURISDICTIONS.  
10:41:39 5 IF THERE'S ANY OTHER BENEFIT, AND I THINK I WAS -- AND I  
10:41:49 6 HAVE SOME CONCERN, I WANTED TO BE SURE, AND I THINK I AM NOW  
10:41:55 7 THAT -- AT FIRST WHAT I THOUGHT YOU WERE ARGUING IN ALLEGING IN  
10:42:01 8 YOUR DEC RELIEF ACTION WAS THAT S3 DID NOT INFRINGE. AND EVEN  
10:42:09 9 IF THAT'S TRUE, THAT WOULDN'T BE THE ANSWER AND IT WOULDN'T  
10:42:13 10 NECESSARILY RESOLVE ANYTHING.  
10:42:14 11 BUT THEN IN YOUR REPLY BRIEF, MAYBE THAT'S WHEN I FINALLY  
10:42:18 12 UNDERSTOOD IT ALL, YOU ARE ALLEGING THE TOOL KIT AS WELL, WHICH  
10:42:21 13 IS THE MISSING PRODUCT.  
10:42:22 14 MR. HADDEN: YES. ALL OF THAT, YOUR HONOR.  
10:42:24 15 AND I HAVE A TUTORIAL THAT MAY HELP EXPLAIN HOW THIS  
10:42:27 16 ACTUALLY WORKS IF YOUR HONOR WANTS TO SEE IT.  
10:42:29 17 THE COURT: HOW LONG IS THAT PRESENTATION?  
10:42:33 18 MR. HADDEN: NOT LONG, IT'S JUST A FEW SLIDES.  
10:42:36 19 THE COURT: OKAY. SURE.  
10:42:38 20 MR. HADDEN: AND I SEE YOUR FIRST QUESTION, THE BASIC  
10:42:40 21 DIFFERENCE BETWEEN STAYING THESE CASES IN THE PI IS OBVIOUSLY  
10:42:43 22 THE AFFECT ON OTHER JURISDICTIONS.  
10:42:45 23 SO IF, YOU KNOW, DESPITE OUR OPPOSITION THE MDL GETS  
10:42:49 24 GRANTED, ALL THE CASES COME TO YOU, YOU HAVE THE POWER TO STAY  
10:42:53 25 THEM ALL. YOU HAVE, EFFECTIVELY, THE SAME RELIEF.

10:42:55 1 THE ONLY OTHER ISSUE THAT I UNDERSTAND FROM MR. SHERMAN IS  
10:42:59 2 THAT PERSONAL WEB WANTS TO KEEP FILING THESE SUITS. AND THAT  
10:43:03 3 IS A PROBLEM. AMAZON HAS, I THINK, A MILLION SIMILARLY  
10:43:07 4 SITUATED CUSTOMERS, AND JUST HAVING THEM GET PICKED OFF EITHER  
10:43:13 5 ALONE OR IN BUNCHES, IS PROBLEMATIC.

10:43:18 6 SO IF THE COURT -- YOU KNOW, THE ISSUE YOU EXPRESSED TODAY  
10:43:24 7 THAT THEY SHOULD BE RESOLVED IN A SINGLE CASE, EITHER AMAZON'S  
10:43:29 8 DECLARATORY RELIEF ACTION OR SOME GENERIC CUSTOMER SHOULD GO  
10:43:34 9 FORWARD AND FIGHT THAT. THERE SHOULDN'T BE NEW CASES BEING  
10:43:38 10 FILED. THAT THEY ARE FILED, THEY SHOULD BE STAYED IMMEDIATELY.

10:43:41 11 THE COURT: SO I UNDERSTAND WHERE WE ARE ON OPEN  
10:43:43 12 SOURCE.

10:43:44 13 MR. HADDEN: YEAH. CAN I JUST COMMENT ON THAT?

10:43:44 14 THIS NOTION THAT THEY NEED ADDITIONAL INVESTIGATION AND  
10:43:45 15 HAVE TO AMEND NOW, RUBY ON RAILS IS OPEN SOURCE. THEY COULD  
10:43:50 16 HAVE -- DR. ROSS COULD HAVE DONE ANYTHING HE NEEDED.

10:43:53 17 THE COURT: THEY CAN BUY IT.

10:43:54 18 MR. HADDEN: IT'S FREE. IT'S OPEN SOURCE. SO THEY  
10:43:58 19 COULD EXAMINE IT UP THE WAZOO AND FIND WHATEVER THEY WANT.

10:44:01 20 AND THE FACT THAT, AS YOUR HONOR NOTED, DR. RUSS COULD NOT  
10:44:06 21 MAP A CLAIM TO IT AFTER WHATEVER ANALYSIS HE DID, KIND OF  
10:44:10 22 PROVES THE POINT, WHICH IS WHY SEEING A BUNCH OF THESE  
10:44:14 23 COMPLAINTS FROM THESE GUYS IS NOT VERY ENCOURAGING.

10:44:18 24 MR. SHERMAN: YOUR HONOR, I DID NOT GET THE SENSE IN  
10:44:21 25 THE READING OF THESE PAPERS, AND I'M NOT REALLY SURE HOW THIS

10:44:24 1 WOULD WORK LEGALLY, THAT A PARTY THAT CLAIMS THAT THEIR PATENTS  
10:44:34 2 ARE BEING INFRINGED, IS BEING ENJOINED FROM SUING AN INFRINGER.  
10:44:43 3 I MEAN, I NEED TO SEE THAT IN THEIR PAPERS. I DON'T KNOW  
10:44:46 4 HOW THAT COEXISTS WITH DUE PROCESS OR ANY STATUTES OF  
10:44:52 5 LIMITATION.  
10:44:52 6 THE COURT: SO I WAS WAY MORE COMFORTABLE WITH A STAY  
10:44:55 7 WHERE I HAVE FAIR LATITUDE AND DISCRETION IN CONTROLLING CASES  
10:45:02 8 ON MY OWN DOCKET AS OPPOSED TO AN INJUNCTION. BUT I WANTED TO  
10:45:05 9 HEAR FROM MR. HADDEN WHAT BENEFITS HE SAW FOR PROSECUTION OF  
10:45:10 10 THESE CASES.  
10:45:11 11 MR. SHERMAN, I THINK YOU RAISED AN IMPORTANT POINT, AND  
10:45:17 12 THE -- I MEAN, I DON'T KNOW THAT AN INJUNCTION COULD PREVENT  
10:45:21 13 YOU FROM FILING ACTIONS, IT COULD BE AN INJUNCTION THAT AFFECTS  
10:45:26 14 THE PROCESS OF A CASE OR PROGRESS OF A CASE ONCE ITS FILED.  
10:45:30 15 AND SO THOSE WOULD BE TWO DIFFERENT THINGS THAT WE WOULD  
10:45:33 16 HAVE TO EXPLORE IN A LITTLE MORE DETAIL. BUT I WOULD AGREE  
10:45:37 17 WITH YOU, I CAN'T ENJOIN YOU FROM FILING CASES BECAUSE YOU  
10:45:40 18 COULD LOSE RIGHTS. AND I DIDN'T SEE THAT IN THE PAPERS.  
10:45:43 19 THE COURT: AND I DON'T THINK, I'M NOT GOING TO TAKE  
10:45:46 20 THE TIME TO LOOK FOR THAT NOW.  
10:45:47 21 SO GO AHEAD, MR. HADDEN.  
10:45:49 22 MR. HADDEN: SURE. TIME TO ARGUE?  
10:45:52 23 THE COURT: YEAH.  
10:45:52 24 MR. HADDEN: OKAY. GREAT.  
10:46:14 25 (OFF-THE-RECORD DISCUSSION.)

10:46:21 1 THE COURT: SO IS THIS SOMETHING I'M GOING TO GET ON

10:46:23 2 THE VIDEO?

10:46:24 3 MR. HADDEN: YEAH, IF I COULD GET THE SCREEN ON.

10:46:26 4 MR. SHERMAN: YOUR HONOR, WHILE THIS IS OCCURRING,

10:46:29 5 DOES THE COURT MIND IF I SIT AT COUNSEL TABLE?

10:46:31 6 THE COURT: ABSOLUTELY. PLEASE DO. AT A PLACE WHERE

10:46:33 7 YOU CAN SEE THIS, I THINK YOU'VE GOT SCREENS THERE.

10:46:37 8 MR. HADDEN: UNFORTUNATELY, I CAN'T SEE IT. IS THERE

10:46:39 9 A SCREEN I CAN WHEEL OVER? OKAY.

10:46:52 10 MR. SHERMAN: YOUR HONOR, MAY WE GET A COPY OF

10:46:54 11 WHATEVER COUNSEL IS SHOWING?

10:46:55 12 MR. HADDEN: HERE IS A COPY OF ONE. AND IF I COULD

10:47:03 13 HAND UP SOME SLIDES TO YOUR HONOR.

10:47:05 14 THE COURT: I APPRECIATE THAT. THANK YOU.

10:47:30 15 MR. SHERMAN: YOUR HONOR, WHILE WE ARE SETTING UP, IF

10:47:32 16 I MAY.

10:47:33 17 MR. HADDEN SAYS THEY HAVE A FEW SLIDES, AND I HAD INQUIRED

10:47:37 18 ABOUT THE OPPORTUNITY TO RESPOND TO DR. SHENOY'S -- I'M MAKING

10:47:43 19 SURE THAT THIS IS NOTED FOR THE RECORD THAT THIS IS, LIKE,

10:47:47 20 45 PAGES.

10:47:49 21 THE COURT: I DIDN'T SEE ANYTHING FILED TO STRIKE THE

10:47:51 22 REPLY DECLARATION.

10:47:54 23 MR. HADDEN: THEY ARE JUST DEMONSTRATIVES, I'M NOT

10:47:57 24 SURE WHAT THE BEEF IS.

10:47:58 25 MR. SHERMAN: WE WEREN'T EVEN GIVEN THEM IN ADVANCE.

10:48:00 1 BUT REGARDLESS, I THINK THAT THIS HIGHLIGHTS THE  
10:48:02 2 DESIRABILITY, IF WE ARE GOING TO GET TO A FINAL DETERMINATION  
10:48:05 3 BY THIS COURT ON THE SUBJECT OF THE PRELIMINARY INJUNCTION  
10:48:08 4 MOTION, THAT WE --  
10:48:09 5 THE COURT: SO MY RULING -- THE ISSUES BEFORE ME  
10:48:14 6 TODAY HAVE VERY LITTLE TO DO WITH THE TECHNOLOGY, IT HAS TO DO  
10:48:17 7 WITH THE PLEADING, NOT THE UNDERLYING TECHNOLOGY. AND SO I  
10:48:21 8 ASSUME THIS IS A COUPLE OF MINUTES.  
10:48:24 9 MR. HADDEN: YEAH. IT'S NOT THAT LONG, YOUR HONOR.  
10:48:26 10 I WANTED TO EXPLAIN WHAT THEY ARE PLEADING IN THEIR COMPLAINT  
10:48:28 11 AND HOW THAT ACTUALLY WORKS IN S3.  
10:48:31 12 THE COURT: OKAY.  
10:48:31 13 MR. HADDEN: IF YOUR HONOR DOESN'T FIND IT HELPFUL, I  
10:48:34 14 WILL OBVIOUSLY STOP.  
10:48:35 15 THE COURT: OKAY.  
10:48:45 16 MR. HADDEN: SO AS YOUR HONOR NOTED, AND I WILL JUST  
10:48:47 17 START WITH THIS SLIDE 4 FROM THE COMPLAINT, RIGHT. THEY TALK  
10:48:53 18 ABOUT DEFENDANT'S UPLOAD THEIR CONTENT TO AMAZON S3, S3 THEN  
10:48:59 19 GENERATES THESE ETAGS, AND THEN THERE'S A LOT OF DISCUSSION IN  
10:49:04 20 THE COMPLAINT WITH THE USE OF THE ETAGS IN THESE CONFIDENTIAL  
10:49:08 21 GETS, AND THIS IF-NONE-MATCH HEADERS.  
10:49:13 22 AND THAT'S REALLY THE BASIS OF ALL OF THEIR CLAIMS AND ALL  
10:49:16 23 OF THEIR MAPPINGS IN EVERY CLAIM OF THE COMPLAINT TO THE  
10:49:20 24 ACCUSED TECHNOLOGY, WHICH IS S3.  
10:49:22 25 SO JUST A LITTLE EXPLANATION FOR WHAT THIS REALLY MEANS IN

10:49:26 1 THE REAL WORLD, RIGHT. SO S3, WHICH STANDS FOR SIMPLE STORAGE  
10:49:30 2 SOLUTION, IS NOT VERY SIMPLE, AND IT'S VERY LARGE, BUT IT IS  
10:49:39 3 AMAZON'S CLOUD STORAGE SERVICE. AND IT HOLDS, KIND OF,  
10:49:46 4 RIDICULOUS AMOUNTS OF DATA IN DATA CENTERS ALL OVER THE GLOBE,  
10:49:50 5 BUT IT'S SIMPLE IN THAT IT PRESENTS A VERY SIMPLE SET OF  
10:49:54 6 FUNCTIONS TO USE.

10:49:58 7 SO IT HAS THESE THINGS CALLED BUCKETS, WHICH ARE JUST KIND  
10:50:01 8 OF LOGICAL COLLECTIONS OF OBJECTS. SO IF YOU ARE A CUSTOMER,  
10:50:05 9 YOU CAN HAVE YOUR OWN BUCKET AND THEN YOU PUT THINGS IN THE  
10:50:08 10 BUCKET AND YOU GET THINGS OUT OF THE BUCKET.

10:50:10 11 AND THAT'S WHAT S3 DOES. BUT IT DOES IT REALLY FAST,  
10:50:14 12 REALLY RELIABLY WITH JUST RIDICULOUS AMOUNTS OF DATA.

10:50:18 13 SO A COMMON USE CASE, AND THE ONE THAT IS BEING ACCUSED IN  
10:50:22 14 THESE COMPLAINTS, IS THAT IF YOU ARE A COMPANY THAT OPERATES A  
10:50:27 15 WEBSITE, YOU WOULD STORE YOUR STATIC CONTENT IN S3.

10:50:33 16 SO THE THINGS LIKE THE IMAGES FOR YOUR WEBSITE, THE  
10:50:36 17 JAVASCRIPT, THE STYLE SHEETS, THE STUFF THAT DOESN'T CHANGE FOR  
10:50:39 18 A PARTICULAR CUSTOMER WHEN THEY GO TO THE SITE.

10:50:44 19 SO THE CUSTOMERS UPLOAD THAT STUFF INTO S3 AS OBJECTS INTO  
10:50:48 20 THE BUCKET, AND S3 CALCULATES THIS THING CALLED AN ETAG. IT'S  
10:50:52 21 SHORT FOR ENTITY TAG. AND IT'S BASICALLY -- IT'S A  
10:50:57 22 MATHEMATICAL FUNCTION OF THE DATA IN THE OBJECT.

10:51:00 23 AND THE POINT OF IT IS BASICALLY A VERSIONING DEVICE.  
10:51:05 24 BECAUSE IF THE DATA IN THE OBJECT CHANGES, THEN THE ETAG  
10:51:08 25 CHANGES. SO YOU CAN DETERMINE IF TWO OBJECTS ARE THE SAME BY

10:51:13 1 DETERMINING THEIR ETAGS INSTEAD OF COMPARING THE OBJECTS  
10:51:16 2 THEMSELVES. AND THAT'S THE POINT OF IT. AND ETAGS ARE A  
10:51:21 3 CONCEPT OF PART OF THE HTTP PROTOCOL, THEY ARE AN OPTIONAL  
10:51:26 4 FEATURE.

10:51:27 5 SO THE WAY THAT THIS WORKS IN THE COMPLAINT IS THAT THE  
10:51:30 6 CUSTOMER, HERE WEBCO, A GENERIC WEBSITE, UPLOADS THE STATIC  
10:51:36 7 CONTENT INTO S3. S3 GENERATES THIS ETAG, AND THEN WHEN A  
10:51:41 8 CUSTOMER GOES TO THE WEBSITE, MAKES A REQUEST, TYPICALLY THE  
10:51:45 9 WEBSITE WILL GENERATE SOME DYNAMIC CONTENT, THE ACTUAL HTML  
10:51:51 10 THAT IT SENDS TO A SPECIFIC CUSTOMER. IT SENDS IT BACK, AND  
10:51:55 11 THAT HTML HAS A BUNCH OF EMBEDDED REQUESTS FOR THESE, THE  
10:52:01 12 IMAGES AND ALL OF THAT. THE REQUESTS ACTUALLY GO NOT TO THE  
10:52:06 13 COMPANY'S WEB SERVER, BUT TO S3. SO THEY GO DIRECTLY TO S3.  
10:52:09 14 YOU PUT THE OBJECT IN, YOU GET IT OUT.

10:52:11 15 AND THERE ARE, ON THE ORDER, AS TREVOR ROWE INDICATED IN  
10:52:17 16 HIS DECLARATION, 12 TRILLION SUCH REQUESTS A MONTH TO S3. SO  
10:52:23 17 BASICALLY GO TO ANY WEBSITE, AND IF YOU LOOK AT THE HTML  
10:52:27 18 UNDERNEATH YOU WILL SEE S3 IN THERE FOR ALL THE IMAGES, BECAUSE  
10:52:30 19 ALL OF THEM ARE STORED IN HERE, RIGHT.

10:52:33 20 AND SO, THE BROWSER GOES DIRECTLY TO S3, IT GETS THE IMAGE  
10:52:40 21 BACK, THE BROWSER USES IT TO RENDER THE PAGE, YOU HAVE YOUR  
10:52:44 22 PUPPY PICTURE. THE BROWSER WILL TYPICALLY STORE THAT IMAGE IN  
10:52:47 23 ITS CACHE, SO IF IT GOES BACK TO THE PAGE IT HAS THE  
10:52:50 24 OPPORTUNITY TO USE IT AGAIN.

10:52:54 25 SO THE TRICK IS IF YOU INCLUDE AN ETAG, LIKE S3 DOES IN

10:52:58 1 RESPONSE, THERE'S SOMETHING CALLED A CONDITIONAL GET. SO WHAT  
10:53:02 2 HAPPENS IS IF THIS USER GOES BACK TO THE WEB PAGE OR A RELATED  
10:53:07 3 WEB PAGE, GETS NEW HTML, THAT HTML HAS ANOTHER "GET" TO THE  
10:53:13 4 SAME OBJECT NAME.

10:53:15 5 SO IT COULD BE PUPPY.JPG, RIGHT. IT'S THE IMAGE OF THE  
10:53:21 6 DOG. INSTEAD OF GOING TO S3 AND SAY, GIVE IT TO ME AGAIN, THE  
10:53:25 7 BROWSER SENDS HIS CONDITIONAL GET. SO IT SAYS, GET IT FOR ME,  
10:53:32 8 IF NONE MATCH THIS ETAG.

10:53:34 9 SO BASICALLY IT SAYS, SENDS THIS REQUEST, GOES BACK UP TO  
10:53:38 10 S3, S3 COMPARES THE ETAG IN THE REQUEST TO THE ETAG IT HAS FOR  
10:53:45 11 THE CURRENT OBJECT. IF THEY ARE THE SAME, IT SAYS YOU ARE  
10:53:48 12 GOOD, SENDS IT IN THIS FORMAT, AND YOU CAN USE WHAT'S IN YOUR  
10:53:54 13 CACHE. SO THAT'S KIND OF THE BASIC PATH THAT THIS GOES TO.

10:53:58 14 THE ALTERNATIVE, OF COURSE, IS IF THE OBJECT HAS BEEN  
10:54:01 15 CHANGED IN S3, SO IF THERE'S A NEW PUPPY IMAGE, THE WEBSITE  
10:54:07 16 OPERATOR HAS CHANGED THEIR WEBSITE, STILL HAS THE SAME NAME,  
10:54:10 17 PUPPY.JPG, BUT IT'S DIFFERENT.

10:54:14 18 IT WILL GET A NEW ETAG, THE ETAG WILL BE DIFFERENT BECAUSE  
10:54:17 19 THE IMAGE IS DIFFERENT.

10:54:18 20 THE COURT: SO YOU ESSENTIALLY DISAGREE THAT RUBY ON  
10:54:21 21 RAILS USES THE FINGERPRINT WHICH IS WHAT UPDATES THIS.

10:54:25 22 MR. HADDEN: WE WILL GET TO RUBY ON RAILS, AND RUBY  
10:54:28 23 ON RAILS HAS NOTHING TO DO WITH THIS.

10:54:30 24 THE COURT: I'M NOT MAKING THAT DECISION, THAT'S JUST  
10:54:32 25 YOUR ARGUMENT.

10:54:33 1 MR. HADDEN: I WILL EXPLAIN THAT IN A SECOND.

10:54:34 2 SO NEW REQUEST, NEW HTML. IT'S GOT A REFERENCE AGAIN TO

10:54:37 3 THE PUPPY IMAGE. RESEND OUR CONDITIONAL GET FROM THE BROWSER,

10:54:42 4 SAME ONE, GOES UP TO THE ETAG.

10:54:45 5 NOW THE ETAGS DON'T MATCH BECAUSE THE PUPPY HAS BEEN

10:54:48 6 UPDATED IN S3. SO INSTEAD, S3 SENDS BACK THE NEW PUPPY IMAGE

10:54:53 7 WITH THIS HTTP 200. OKAY.

10:54:57 8 NEW IMAGE SHOWS, GETS REPLACED IN THE CACHE, RIGHT.

10:55:01 9 THIS IS EVERYTHING THAT THE COMPLAINT ACCUSES.

10:55:08 10 THE COURT: IT'S PRETTY STRAIGHTFORWARD.

10:55:11 11 MR. HADDEN: STRAIGHTFORWARD, RIGHT. IT'S DONE A

10:55:13 12 ZILLION TIMES FOR MILLIONS OF CUSTOMERS ALL THE TIME. NONE OF

10:55:13 13 THIS DEPENDS ON RUBY ON RAILS.

10:55:18 14 SO WHAT'S RUBY ON RAILS?

10:55:18 15 THE COURT: WELL, I WILL WAIT TO SEE, THAT'S

10:55:20 16 PLAINTIFF'S JOB TO LET ME KNOW HOW RUBY ON RAILS CONTRIBUTES

10:55:25 17 HERE.

10:55:25 18 MR. HADDEN: AS ALLEGED IN THE COMPLAINT, RUBY ON

10:55:27 19 RAILS DOES TWO THINGS. IT'S USED BY WEBSITE OPERATORS TO BUILD

10:55:34 20 WEB APPLICATIONS, IT'S A FRAMEWORK. AND USING THE AMAZON RUBY

10:55:40 21 SDK, THOSE CUSTOMERS CAN KIND OF AUTOMATE THE LOADING OF THEIR

10:55:47 22 DATA INTO S3.

10:55:50 23 NOW THERE'S THIS OPTIONAL FEATURE WHERE YOU CAN CREATE A

10:55:54 24 FINGERPRINT. WHAT THE FINGERPRINT DOES THOUGH, IS IT GETS

10:55:57 25 ADDED TO THE NAME OF THE OBJECT. SO INSTEAD OF PUPPY.JPG,

10:56:02 1 IT'S PUPPYFINGERPRINT.JPG.  
10:56:05 2 THE COURT: AND THAT IS A RUBY ON RAILS FUNCTION?  
10:56:07 3 MR. HADDEN: THAT IS THE ACCUSED FEATURE OF RUBY ON  
10:56:09 4 RAILS.  
10:56:09 5 THE COURT: AND YOU DON'T DISAGREE WITH THE  
10:56:11 6 FINGERPRINT.  
10:56:11 7 MR. HADDEN: I DON'T DISAGREE, BUT THE FINGERPRINT  
10:56:14 8 JUST BECOMES PART OF THE NAME FOR THE OBJECT IN S3, RIGHT.  
10:56:17 9 SO NOW WE HAVE THIS RED OBJECT, IT'S GOT THE NAME.  
10:56:20 10 THE KEY POINT IS THAT NONE OF THAT HAS ANYTHING TO DO WITH  
10:56:24 11 THESE CONDITIONAL GETS.  
10:56:25 12 CONDITIONAL GETS ARE ALL SPECIFIED BASED ON THE ETAG, NOT  
10:56:30 13 THE NAME OF THE OBJECT OR THE FILE.  
10:56:34 14 SO EVERYTHING IN THEIR COMPLAINT THAT REFERS TO  
10:56:37 15 CONDITIONAL GETS, IF NONE MATCH HEADERS OR ETAGS, IS ALL BASED  
10:56:41 16 ON THIS SIMPLE PROCESS THAT WE SAW IN S3. AND IT'S THE SAME  
10:56:47 17 PROCESS THAT HAPPENS, IF IT'S A RUBY ON RAILS OBJECT OR ANY  
10:56:50 18 OTHER.  
10:56:53 19 REQUEST THE OBJECT, YOU GET THE HTML, YOU GET THE "GET."  
10:56:57 20 YOU GO UP TO S3, YOU GET THE OBJECT. IT'S GOT A NAME THAT HAS  
10:57:00 21 A FINGERPRINT IN IT, DOESN'T MAKE ANY DIFFERENCE TO THE WEB  
10:57:03 22 BROWSER. THE WEB BROWSER WILL MAKE THE CONDITIONAL GET BASED  
10:57:06 23 OFF THE ETAG. GOES BACK UP TO S3, EXACT SAME COMPARISON.  
10:57:12 24 THE COURT: SO I -- UNFORTUNATELY, I'M COMING TO THE  
10:57:14 25 END OF THIS HOUR AND I AM GOING TO MOVE YOU ALONG.

10:57:16 1 MR. HADDEN: YEAH.

10:57:17 2 THE COURT: OKAY. SO IS THERE ANY -- I WANT YOU TO

10:57:21 3 KNOW THAT, AS I SAY, I AM PROBABLY LEANING MORE TO A STAY THAN

10:57:29 4 TO AN INJUNCTION, BECAUSE I REALLY DON'T WANT TO CREATE THE

10:57:34 5 CONCERNS THAT MR. SHERMAN HAS ABOUT HIS FUTURE SUITS. AND I

10:57:40 6 DON'T THINK I CAN REACH OUT THAT FAR AND IN ANY WAY PERIL HIS

10:57:46 7 CLIENT'S RIGHT TO FILE THOSE CASES TIMELY. YOU CAN SERIALL

10:57:55 8 ASK TO MODIFY AN INJUNCTION AS WELL, ONCE THERE'S AN IDENTIFIED

10:57:58 9 CASE. SO THERE ARE WAYS TO DEAL WITH THIS, CERTAINLY.

10:58:02 10 SO LET ME JUST, IS THERE ANYTHING ELSE ON -- AND AGAIN,

10:58:05 11 JUST ON THE INJUNCTION OR STAY ISSUE.

10:58:08 12 MR. HADDEN: NO, YOUR HONOR.

10:58:09 13 I DO THINK KATZ IN THE FEDERAL CIRCUIT AUTHORIZED

10:58:14 14 YOUR HONOR TO ENJOIN SUITS IN THIS SITUATION, AND THAT THE

10:58:19 15 GRANT OR DENIAL OF THAT INJUNCTION REQUEST IS IMMEDIATELY

10:58:23 16 APPEALABLE TO THE FEDERAL CIRCUIT.

10:58:25 17 SO I DON'T THINK THERE'S ANY DISPUTE ABOUT THE COURT'S

10:58:28 18 POWER. AS A PRACTICAL MATTER, IF THE COURT IS GOING TO STAY

10:58:32 19 ALL OF THESE CASES, THE EFFECT IS GOING TO BE THE SAME.

10:58:36 20 THE COURT: OKAY.

10:58:37 21 MR. SHERMAN, LET ME GIVE YOU THE LAST WORD HERE ON THIS.

10:58:41 22 I'M NOT GOING TO BE DECIDING THIS RIGHT NOW, BUT THIS IS WHEN

10:58:45 23 WE HAVE OUR --

10:58:46 24 MR. SHERMAN: I UNDERSTAND, AND I WOULD LOVE THE

10:58:48 25 OPPORTUNITY, AND PERHAPS AT OUR NEXT HEARING, TO PRESENT OUR

10:58:50 1 OWN LITTLE SERIES OF IMAGES, CARTOONS, WHATEVER.

10:58:54 2 THE COURT: ULTIMATELY, I HAVE A TUTORIAL ON YOUR

10:58:56 3 PATENT.

10:58:57 4 MR. SHERMAN: I UNDERSTAND. BUT WE WOULD LIKE THE

10:58:58 5 MINI-EARLY TUTORIAL AS WELL, AND I KNOW YOU DON'T WANT TO HEAR

10:59:01 6 IT TODAY.

10:59:03 7 WITH RESPECT TO SOME OF THE POINTS THAT COUNSEL JUST

10:59:06 8 RAISED, I DO THINK THAT THE ISSUE OF THE CUSTOMER SUIT

10:59:12 9 EXCEPTION NEEDS TO BE PUT IN ITS PROPER CONTEXT.

10:59:17 10 IT IS A CUSTOMER SUIT EXCEPTION THAT DEALS WITH RESELLERS.

10:59:21 11 IT WORKS GREAT WITH GUN GRIPS, IT WORKS GREAT WITH DEVELOPERS

10:59:28 12 OF SMART PHONES, SUCH AS THE GOOGLE CASE WHERE THE DEVELOPERS

10:59:33 13 WERE USING THE GOOGLE TECHNOLOGY AND THEY WERE SELLING THE

10:59:38 14 SMART PHONES.

10:59:39 15 THESE INDIVIDUAL DEFENDANTS ARE NOT IN THE BUSINESS, AND

10:59:40 16 IN FACT, ARE NOT RESELLING ANYTHING OF AMAZON S3. WHILE THEY

10:59:48 17 MAY BE CUSTOMERS, THEY ARE NOT RESELLERS.

10:59:51 18 AND I BELIEVE THAT THE FOUNDATION OF THIS EXCEPTION TO THE

10:59:57 19 FIRST FILED SUIT DOCTRINE, IT'S AN EXCEPTION, WORKS ONLY IF YOU

11:00:02 20 ARE DEALING WITH CUSTOMERS WHO ARE RESELLERS.

11:00:07 21 I'M PLEASED THAT COUNSEL DOESN'T SPEAK ABOUT THE PRIOR

11:00:11 22 AMAZON ACTION, BECAUSE IT OFFERS THEM NO SUPER HERE FOR THE

11:00:19 23 REASONS THAT WE'VE INDICATED IN OUR OPPOSITION PAPERS.

11:00:23 24 BUT I THINK, IMPORTANTLY, THE AMAZON DJ ACTION WILL NOT

11:00:28 25 RESOLVE CLAIMS AGAINST THE INDIVIDUAL DEFENDANTS BECAUSE

11:00:31 1 PERSONAL WEB'S THEORY OF INFRINGEMENT REVOLVES AROUND RUBY ON  
11:00:36 2 RAILS NOT S3, IT IS THE RUBY ON RAIL WEBSITE OWNER THAT  
11:00:40 3 CONTROLS AND DRIVES THE USE OF ETAGS. THEY ARE THE ONE THAT  
11:00:47 4 CONTROL IT AND DRIVE IT, NOT AMAZON S3.

11:00:50 5 AND THEN FINALLY, YOUR HONOR, WE WOULD LIKE THE COURT AT  
11:00:57 6 SOME POINT, IF YOU ARE CONSIDERING THIS, TO GIVE US THE  
11:01:01 7 OPPORTUNITY TO PROVIDE SOME FORM OF A SUR REPLY WITH RESPECT TO  
11:01:08 8 THE -- I'M SORRY IF I'M MISPRONOUNCING HIS NAME, THE  
11:01:11 9 DECLARATION OF THEIR EXPERT. MAYBE NOW, MAYBE WITH RESPECT TO  
11:01:15 10 AN AMENDED COMPLAINT, BUT I THINK THAT THAT WOULD BE  
11:01:18 11 APPROPRIATE.

11:01:18 12 THE COURT: WELL, AS I SAID, I WASN'T REALLY RELYING  
11:01:21 13 ON IT, BUT AS LONG AS IT'S IN THE RECORD, I DON'T KNOW THAT  
11:01:27 14 IT'S --

11:01:29 15 MR. SHERMAN: WELL, WE READ THE COURT'S STANDING  
11:01:30 16 ORDERS ON REPLY DECLARATIONS, THERE WAS NO REASON TO SAY STRIKE  
11:01:34 17 IT. IT'S NOT THAT IT WAS EVIDENTIARY --

11:01:36 18 THE COURT: WHAT WOULD YOU LIKE AS A SUR-REPLY  
11:01:38 19 THOUGH, WHAT ARE YOU ASKING FOR?

11:01:40 20 MR. SHERMAN: I'M ASKING FOR --

11:01:41 21 THE COURT: I HAVE LIMITS, I MEAN, I'M NOT GOING TO  
11:01:43 22 JUST OPEN THE GATES. DO YOU WANT A THREE-PAGE BRIEF AND A  
11:01:47 23 FIVE-PAGE DECLARATION?

11:01:48 24 MR. SHERMAN: YES.

11:01:48 25 THE COURT: THERE YOU ARE.

11:01:50 1 MR. SHERMAN: DON'T STOP WHEN YOU'RE AHEAD.

11:01:52 2 THE COURT: WE WILL DO BUSINESS WELL, MR. SHERMAN. I

11:01:56 3 LIKE THAT. AND HOW MUCH TIME WOULD YOU LIKE?

11:01:57 4 MR. SHERMAN: TWO WEEKS.

11:01:58 5 THE COURT: THAT'S REASONABLE. OKAY. THAT'S GOOD.

11:02:05 6 LET ME -- NOW, I UNDERSTAND FROM MY COURTROOM DEPUTY I

11:02:09 7 WILL SEE YOU ON JUNE 7TH, NOT JUNE 14TH.

11:02:11 8 MR. SHERMAN: OH.

11:02:13 9 THE COURT: APPARENTLY THERE WAS --

11:02:14 10 MR. SHERMAN: I WAS LOOKING AT THE PAPERS.

11:02:16 11 THE COURT: THAT'S RIGHT, AND APPARENTLY WHEN IT ALL

11:02:19 12 CAME OUT.

11:02:19 13 SO THE STAY WILL BE UNTIL THE HEARING. YOU UNDERSTAND IF

11:02:24 14 I'M NOT READY TO RULE, I MAY EXTEND IT, AND I'M HOPING TO KNOW

11:02:27 15 FROM THE MDL COMMITTEE AT THAT POINT.

11:02:29 16 NOW YOU MAY RUN TO THE MDL COMMITTEE, MR. SHERMAN, AND

11:02:33 17 SUGGEST A DIFFERENT JUDGE AFTER THIS HEARING, I DON'T KNOW.

11:02:35 18 MR. SHERMAN: OH, THERE'S NO WAY THAT'S GOING TO

11:02:37 19 HAPPEN, YOUR HONOR.

11:02:38 20 AND HAVE A HAPPY FLAG DAY SINCE I WON'T SEE YOU ON THE

11:02:41 21 14TH.

11:02:42 22 THE COURT: ALL RIGHT.

11:02:43 23 I THINK THAT TAKES CARE OF EVERYTHING. THIS IS, YOU KNOW,

11:02:48 24 NECESSARILY BY THE COMPLEXITY OF THE NUMBER OF PARTIES AND

11:02:51 25 ISSUES FLOATING AROUND, MY GUESS IS THESE HEARINGS WILL BE A

11:02:54 1 LITTLE BIT LENGTHY WHEN WE HAVE THEM.

11:02:56 2 AND ONCE I GET -- ONCE THE GROUND STOPS MOVING AND I KNOW

11:03:00 3 WHAT I ACTUALLY HAVE AND ONCE YOU'VE SERVED ALL THE PARTIES

11:03:05 4 THAT THERE ARE GOING TO BE, WE WILL PROBABLY HAVE TO HAVE SOME

11:03:08 5 KIND OF OMNIBUS CASE MANAGEMENT CONFERENCE WHERE WE CAN REALLY

11:03:13 6 SPEND A COUPLE OF HOURS MAPPING OUT HOW WE PROCEED.

11:03:17 7 BECAUSE, WELL, AS I SAY, I COULD END UP WITH ZERO OF THESE

11:03:20 8 CASES, JUST MY 30, BECAUSE IT'S NOT AN MDL, OR ALL OF THEM.

11:03:24 9 AND I DON'T KNOW HOW THE MDL COMMITTEE WORKS. THEY DON'T ASK

11:03:29 10 MY OPINION.

11:03:30 11 MR. SHERMAN: UNDERSTOOD.

11:03:30 12 THANK YOU VERY MUCH FOR YOUR TIME.

11:03:31 13 THE COURT: ALL RIGHT. THANK YOU ALL.

11:03:45 14 MR. SHERMAN: WE ARE TOLD THAT THERE WAS A CMC TODAY.

11:03:50 15 IS THERE A CMC SET IN THE DJ ACTION?

11:03:53 16 THE COURT: YOU KNOW WHAT, I MISSED THAT ENTIRELY.

11:03:57 17 IS THAT RIGHT, WE HAD A CMC IN YOURS?

11:04:00 18 MR. MONROE: I THINK YOU GUYS HAD, IN THE ONE OF THE

11:04:03 19 MINUTE ORDERS, I THOUGHT I REMEMBER SEEING ONE WAS A CMC.

11:04:13 20 THE COURT: FOR THE AMAZON CASE?

11:04:15 21 MR. MONROE: I THINK IT WAS IN THE SAME ORDER THAT

11:04:17 22 RESET THE HEARING DATE OF THE MOTION TO DISMISS TO --

11:04:21 23 THE COURT: SO THAT'S ON THE 7TH.

11:04:23 24 MR. MONROE: BUT I THOUGHT IT SET A CMC DATE ALSO.

11:04:27 25 THE COURT: OH, YOU DIDN'T MEAN TODAY HAVING A CMC.

11:04:32 1 MR. MONROE: THE QUESTION IS WHETHER THAT SHOULD BE  
11:04:35 2 MOVED OFF.  
11:04:36 3 THE CLERK: IT IS ALSO SET ON THE 7TH.  
11:04:38 4 THE COURT: I DON'T KNOW THAT IT'S BENEFICIAL TO HAVE  
11:04:39 5 IT THEN.  
11:04:40 6 MR. MONROE: RIGHT. THAT'S WHY I RAISED IT.  
11:04:42 7 MR. SHERMAN: I AGREE.  
11:04:43 8 THE COURT: ALL RIGHT. I WILL PUT OUT AN ORDER  
11:04:45 9 VACATING THAT CMC DATE. AND WOULD YOU REMIND ME, WE WILL HAVE  
11:04:50 10 TO FIGURE OUT WHEN TO RESET IT.  
11:04:52 11 I WOULDN'T DO ANYTHING, I WOULDN'T KNOW UNTIL AFTER THE  
11:04:55 12 MDL COMMITTEE IS DONE. THANK YOU FOR MENTIONING THAT. I WILL  
11:04:58 13 VACATE THAT DATE.  
11:05:00 14 MR. MONROE: THANK YOU.  
11:05:01 15 (THE PROCEEDINGS WERE CONCLUDED AT 11:05 A.M.)  
16  
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**CERTIFICATE OF REPORTER**  
4  
5  
6  
7

8           I, THE UNDERSIGNED OFFICIAL COURT  
9        REPORTER OF THE UNITED STATES DISTRICT COURT FOR  
10      THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH  
11      FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY  
12      CERTIFY:

13           THAT THE FOREGOING TRANSCRIPT,  
14        CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND  
15        CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS  
16        SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS  
17        HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED  
18        TRANSCRIPTION TO THE BEST OF MY ABILITY.

19  
20  
21  
22

23  
24  
25             
          SUMMER A. FISHER, CSR, CRR  
          CERTIFICATE NUMBER 13185

DATED: 4/28/18